

**JOHANNIS
SELDENI ...
OPERA OMNIA,
TAM EDITA QUAM
INEDITA. IN...**

John Selden







12

THE
WORKS
OF
JOHN SELDEN, Esq;

VOL. III. PART II.





THE
HISTORY
OF
TYTHES.



VOL. III.

6X

To the most HONOURED

Sir ROBERT COTTON,

O F

C O N N I N G T O N,

K N I G H T and B A R O N E T.

NOBLE SIR,

JUstice, no less than observance, urges me to inscribe this *History of Tythes* to your name. So great a part of it, was lent me by your most ready courtesy and able direction, that I restore it rather than give it you. And it cannot but receive an increase of estimation from your interest thus seen in it. For to have borrowed your help, or used that your inestimable library, which lives in you, assures a curious diligence in search after the inmost, least known and most useful parts of historical truth, both of past and present ages. For such is that truth which your humanity liberally dispenses; and such is that which by conference is learned from you. Such indeed, as if it were, by your example, more sought after, so much headlong error, so many ridiculous impostures would not be thrust on the too credulous, by those which stumble on in the road, but never with any care look on each side, or behind them; that is, those which keep their understandings always in a weak minority that ever wants the authority and admonition of a tutor. For, as on the one side, it cannot be doubted but that the too studious affectation of bare and sterile antiquity, which is nothing else but to be exceeding busy about nothing, may soon descend to a dotage; so on the other, the neglect or only vulgar regard of the fruitful and precious part of it, which gives necessary light to the present, in matter of state, law, history, and the understanding of good authors, is but preferring that kind of ignorant infancy, which our short life alone allows us, before the many ages of former experience and observation, which may so accumulate years to us, as if we had lived even from the beginning of time.

But

DEDICATION.

But you best know this ; in whom that useful part is so fully eminent, that the most learned through *Europe*, willingly acknowledge it ; and so open hath your courtesy ever made the plenteous store of it to me, that I could not but thus offer you whatsoever is in this of mine own also, as a symbol of some thankfulness. It was at first destined to you And however through the hasty fortune that, I know not why, it suffered at the press, some pieces of it have been dispersed without the honour that your name might add to them ; I shall be yet ever so ambitious of that honour, that the whole shall never, for so much as I can prevent, be communicated without this prefixed testimony of duty to you. Receive it favourably, noble Sir, and continue to me that happiness which I enjoy, in that you neither repute me unworthy of your love, nor permit me in ignorance when I come to learn of you.

From the *Inner-Temple*, April 17.
C10.DC.XVIII.



THE

THE P R E F A C E.

IT hath even so happened with not a few of the malicious, what through lazy ignorance; what through peevish jealousy, at their first sight or hearing of the name of this *History of Tythes*, as it was wont with those raw novices, that, upon their first admission to the sacred mysteries of the *Gentiles*, troubled and frighted themselves with a world^a of false apparitions, while they thought of what they should see in the inmost sanctuary at the unknown presence of their deity. And doubtless, the priest had not a little work to persuade them, that what they should there meet with, was not an unlucky *Empusa*, not a formidable *Mormo*, not a wanton *Cobalus*, not a mischievous *Fury*, not indeed any thing that their idle brains, being such mere strangers to the abstrusest parts of truth, had fashioned out. The many fancies that malice, ignorance, and jealousy have framed to themselves touching this of mine, have been no less ridiculous; and some equally fearful, but equally false. And I must here first play the priest also, and so clear, if it were possible, those fancies, by protesting that it is not written to prove that tythes are not due by the law of God; not written to prove that the laity may detain them; not to prove that lay hands may still enjoy appropriations; in sum, not at all against the maintenance of the clergy. Neither is it any thing else but it self, that is, a mere narrative, and the *History of Tythes*. Nor is the law of God, whence tythes are commonly derived, more disputed of in it, than the divine law, whence all creatures have their continuing subsistence, is inquired after in *Aristotle's* history of living creatures, in *Pliny's* natural history, or in *Theophrastus* his history of plants; or than the justice of the old courts of *Rome*, is examined in *Brodaeus* his history of them, or the convenience of the civil and canon laws in that of *Ricallius*. Nor was any thing, that belonged to the title, purposely omitted. Nor was any piece of it stolen from any other man's notes. That, as the rest also hath been most maliciously imputed by some, that so impudently dare conjecture, though they be far enough from being either—*arte aut scientia divini*, and as judiciously censure it or me, as those in *Lucian*, could *Euripides*, that were weekly stark mad in rhyme till winter, by reason of what they had heard of his tragedies in summer, and could neither judge at all of what they said, nor yet possibly hold their peace. But they know, there are never wanting long ears ready stretched out to base detraction; and that animates them. I know not how otherwise to confirm these protestations than by sending him, that believes me not here, to the view of the whole. He may be there further satisfied, and shall then see also that it is not of the pitch of the doctrine of the *breviary*, or within the compass of pocket-learning. Nor will it, I think, look like what were patched up out of *possils*, *polyanthreas*, common place books, or any of the rest of such excellent instruments for the advancement of ignorance and laziness. Nor is any end in it, to teach any innovation by an imperfect pattern had from the musty relics of former time. Neither is antiquity related in it to shew barely what hath been, for the sterile part of antiquity which shews that only, and to no further purpose, I value even as slightly as dull ignorance doth the most precious and useful part of it, but to give other light to the practice and doubts of the present. Light, that is clear and necessary. Nor could such as have searched in the subject see at all often, for want of such light. But *illos non peto, piscem peto*. Neither hath it at all wanted the most approving censures of such as are of choicest learning, ablest judgment, and truly *decemissimi* as well in worth, as title. Nor is it at all material what any one shall cast on it through his secure confidence only, in any of those old^b ensigns of dissembled ignorance or gravity, the beard, the habit, and title. It is for such to learn by, not at all to censure. And none of the ingenious and learned, that read it, will be backward, I think, to allow it for truth, as he did that first licensed it for the press with *ita est*, and subscription of his name.

But we leave this preposterous admonition in negatives, yet by reason of the headlong impotency of such as have in great number already misconceived it, they were necessary and could not elsewhere have had so fit place, and shortly thus delineate what it is, by the end and purpose of writing it; by the argument of it; by the course of composing it; and by the sum of performance in it in behalf of the clergy.

For the first; We find that in the frequent disputations about tythes, not only arguments out of holy writ for proof of a divine right to them, but matter also of fact, that is, practice and story, is very often used; As the kinds of payment of them among the *Hebrews*, among the

^a Proclus in Platonic theol. lib. 1. cap. 1. & lib. 3. cap. 17.

^b 1640r. Petruslib. 1. epist. 91.

Gentiles, the maintenance of the church in the primitive times, the arbitrary consecrations, appropriations and infodations of them in the middle times, the payment of them at this day in the several states of *Chriftendom*, together with the various opinions and positive laws touching them. For, opinions and laws, as they are related only, and fall under the question of what and whence they were, are merely of fact. And proofs are hence often drawn to confirm sundry occurrences in inquiry for the truth on either side. That of the divine right of them is so wholly a point of divinity, and handled so fully by divers schoolmen, so imperiously by most of the canonists, and so confidently by some of our late divines, that whatever could be said touching that only, by inference out of the holy text, which must be the sole trial of it, would but seem taken from some of them which have so purposely disputed it. Neither were that so fit to be meddled with by any, as by a profest divine. But for that other part which falls under history, there is not one of them all which having boldness enough to adventure on it, while he disputes withal of the divine right, shews not also too much either ignorance or negligence in talking of it, being usually deceived, and deceiving in it those most of readers that give their historical faith captive to bare names and common reputation. And as in that old picture of *Homer*, the rest of the following poets greedily swallowed whatever he had vomited forth; so among these, one so rashly receives herein error from another, and so increases it, that there was never found a better example of the old proverb *Sardi venales*, or *worse and worse*, than in most of their multiplied pamphlets of it. Which of them relates towards what is fit to be known touching the payment among the *Hebrews*? Among the *Gentiles*? Among *Christians* of former times? Nay, which of them seem to know, or to have heard of the chief human positive laws made for tythes? Yet would they gladly use them if they had them. Where is among them an ingenious discovery of the various opinions of past ages that belong hither? Who of them once touches the right ancient course of settling tythes at first in monasteries, colleges, or other such corporations, by appropriations and consecrations of them? Who of them tells us other than mere fables, while he talks of the original of infodations? And with what patience can you read those which, as great doctors, talk of exemptions, and pretending themselves to the world for such as can discover the most secret curiosities, or *cornicum oculis configere*, tell us of four orders exempted, and make the *Hospitalers* and those of *S. John's* of *Jerusalem* to be two of them, with other such most gross and ridiculous absurdities? And it is a common, but most deceiving argument among them, affirmatively to conclude fact or practice of tything from what they see ordained for tythes in any old canon of the church; as if every thing so ordained, necessarily had also a following use. It being indeed frequent enough to find canons directly contrary to following practice; and that even in the proceedings of the canon law, which, as the body of it is, was never received wholly into practice in any state, but hath been ever made subject in whatsoever touches the temporals or maintenance of the church, which come from laymen, to the variety of the secular laws of every state, or to national customs that cross it. Is it enough to prove that parish churches, in *England*, were regularly ever to be repaired by the parsons, because the general canon law is so? Or that a clergyman might not have bequeathed any chattels wherein he had right in respect of his church, because also by that law he might not? In *England*, general customs of the contrary in both cases are still held, and in many other, as you see in *Linwood*, who knew both the general practice here and the canons, and often also teaches their differences in other cases. Very many like may be found in other states, by comparing their immemorial customs, and old ordinances that are against the canons, and that both in the eastern and western churches. And for the eastern canon law, passages are found to this purpose in *Zonaras* and *Balsamon*, the two chief and ancient canonists of that part. The laity at pleasure commonly limited the canon law, especially where it touched their dignities or possessions, and that as well before *Luther* so derogated from the authority of it by burning it at *Wittenberg* in a publick assembly, in despite of the pope, as after, which might be manifested by a world of examples, but it is most clear to all that know history. To argue therefore from affirmative canons only to practice, is equal in not a few things, and especially in this of tything, to the proving of the practice of a custom from some consonant law of *Plato's* common-wealth, of *Lucian's* men in the moon, or of *Aristophanes* his city of cuckoos in the clouds. To supply therefore the want of a full and faithful collection of the historical part, was the end and purpose why this was composed, which might remain as a furnished armory for such as inquire about this ecclesiastick revenue, and preferring truth before what dulling custom hath too deeply rooted in them, are not unwilling to change their old acorns for better meat.

As touching the argument of it; the whole being xiv. chapters, the first vii. are thus filled. The first hath what is, in best authority of the antients, belonging to those tythes paid before the *Levitical* law. The second the several kinds paid by the *Hebrews* under the law, and this from *Hebrew* lawyers. The third shews the practice of the *Romans*, *Grecians*, and some other *Gentiles*, in paying or vowing them. Then the whole time of *Christianity* being quadripartitely divided, with allowance of about xx years more or less to every part, takes up the next four chapters, in which the practice of payment of tythes, arbitrary consecrations, appropriations, info-

^a Aelian. *varia. hist.* lib. 13. cap. 31.

^b *ordinarii* c. 4. cum vot.

^c *Linwood* c. nullus tit. de consuetudine & tit. de officio archidiaconi c. archidiaconi verb. reparacione, & de testamentis c. ut clericali verb. legitima.

^d *Balsamon*, in *Chalcid.* can. 11. & 18. praeter id quod de Azapio & Gabadio episcoporum Boskreniensium potestibus, subiungitur concilio Carthaginiensi.

^e *Stellan.* commentar. lib. 2.

^f Extr. tit. de eccles. aestific. c. 4. de his.

^g Extr. tit. de offic. iudicis

dations and exemptions of them, establishment of parochial right in them, as also the laws both secular and ecclesiastick, with the opinions of divines and canonists touching them, are in their several times manifested. But so only, that whatsoever is proper to this kingdom of England, either in laws or practice, either of payment or of arbitrary consecrations, appropriations, or inclosures, or establishment of parochial right, together with a corollary of the ancient jurisdiction whereto they have been subject, is reserved all by itself to the next seven chapters. But every of the xiv. have their arguments prefixed, which may discharge me of further declaration in this place. By this time, I trust, you conceive what the name of *History* in the title pretends. And the *Tythes* spoken of purposely in it, for perhaps it is needful to admonish that also, are only such as either have been paid, vowed, or dedicated to holy uses, or else give light to the consideration of the performance or omission of such payment. Neither the *decimæ Saladinæ*, nor the *decimæ papales*, which were wont to be imposed, nor the *decima lituum* in the imperials, nor the old *ratio decimarum* upon the *lex Pappia*, have had place here, nor the like, which are no more to this subject, than the tythes paid to the crown by our clergy, or by those of the boroughs by grant in parliament, or the terrages in tenths reserved by lessors often in *France* and *Spain*, or the tenths antiently paid in some places, as impost upon merchandize, or that old custom of *England*, in paying the *aurum reginæ*, that is, a tenth part of as much money to¹ her as was given at any time to the king, or other such. Nor had the tythes of houses in *London*, place here, otherwise than as they occur in those acts of parliament and the decree under *Henry VIII.* that mentions the ministers maintenance by the name of tythes. For before that decree, however the *LII.* farthings, paid on *Sundays* only, were near the just tythe of every 10 s. rent, that is, about 3th, and were perhaps thought on by that name, as may be collected out of *Limwood*; yet these joined with the other offerings of great festival days, made up indeed only a certain competency of maintenance, but could not properly be reputed among tythes, neither in regard of their value, nor, as compared with the antient institution of tythes among the *Jews*, in respect of their nature. For their value came to much more than a tythe, as also that doth which hath the name of tythe at this day in *London*. Neither is there reason enough why the *LII.* farthings that were offered on *Sundays*, should be severally, and as divided from the other offerings, thought on to this purpose. And for their nature before these acts and the decree, I here offer only what I find in a short discourse, titled, *A devise how the curats of London may be provided of sufficient livings*, written under *Henry VIII.* and remaining yet among the records of the exchequer. The author of it first shews, that all ministers of God's word should give freely their labours in the church, and be maintained of the tythe of the free gifts of the earth; as of cattle, corn and fruit; which he supposes is as freely given them by the Almighty, through the labour of the people, as the preaching of the word and administration of sacraments is to the people, through the labour of the ministers. But he permits not that any money or other profit, being not *living gifts*, as he calls them, is by the law of God tytheable: so that where no such *living gifts* and increase are, there no tythes, as tythes, are payable to them, as he concludes. Nor indeed is any mention of other tythes in the *Levitical* law, than of the increase of the earth in fruit and cattle that is, of the gain only out of those more natural trades, which *Aristotle* elegantly styles *βιωτικὰ ἐργατὰ τῆς γῆς καὶ τῶν ζώων*, of tilling the earth and breeding of cattle. And that which holy writ calls *תבואת העבודה*, that is, *increase or revenue*, where the law of predial tything is iterated, is understood by the *Jeruzi* doctors of the fruits and increase, given us out of the soil; and is well paraphrased by the *septuagint*, when they turn it *αὐτοφύωτα τῆς γῆς*, that is, *the increase of the earth*; and in the vulgar it is expressed by *fringes*. But then, *It is to be by what law curats of churches in London can have* (so are the very syllables of that discourse) *any living of the people otherwise but like as the people by their own consents will give them for their office doing*. In very dedde they must have levings to kepe them out of necessity. And thereby it is to be how in *London* they cannot receive ther levings of Godd by no lively gifts of grace, like as in the country. But in *London* they must receive their levings of mens gifts; that is money which is every man's own, for ther office doing. The pope by his law, nor by his bulls, cannot compell no man to gisse his own gode to theym for their office doying more then people will consent to giff theym. For *Christ* saith that their levings is freely given them of Godd, if they do ther office to see all people worke. Therefore that if the people haue not labors and levings, they ought to have none, nor can make no law whereby to axe no mans gode. Therefore that levings which they have had in *London* hath been by the consents of the people which hath long time given them 14d. of every noble rated by the rents of houses, which hath been riche levings: wherewith they not content but over that hath procured of the people money so many weys by casualties of beryalls, crystynings, weddinges, obits, and offerings, yhe and secretly riselyth mens consciences taking pryvy tythes of whatsoever they can get, be it out of evil gotten goodes. Howsoever they can get it, they call it ther dewtie. And thence he says, some benefices were worth cⁱⁱ. some lxxxⁱⁱ, some c. marks, others l. ⁱⁱ. and then he shortly advyses, how the ministers maintenance should be otherwise there limited and levied. But who sees not enough now that what is called *tythes of houses in London*, is rather called so only than is at all so? Yet because the name of tythes, in those acts of parliament, is given to the ministers maintenance there, it had been perhaps reputed negligence to have omitted the remembrance of them.

¹ De ea re consulas, si plura velis, Joscelinum de Brake-land, cap. 24. ms. in bibl. Cottoniana & codicem illum Gervasi Tübirienfis dictum in scaccarii archivis.

² Chap. 8. §. 19.

³ Polit. 2. cap. 5.

In the course of composing it, the testimonies were chosen by weight, not by number, taken only thence which the margin directs, never at second hand. Neither affected I to muster up many petty and late names for proof of what is had wholly by all from ancient fountains. The fountains only, and what best cleared them, satisfied me; and I supposed every judicious reader would be so best satisfied also. For in mere matter of elder story, what credit can *Nanclesius*, *Cario*, *Cuspinian*, or the numerous rest of later time, add to the testimonies of those antients yet extant, from whom they borrowed whatever they have new dressed of preceding ages? *Petrus Comestor*, or *Ludolphus de Saxonia*, may as well increase the credit of holy writ, as those other may the truth of such histories as instructed them in common with the rest of posterity. Neither at all with I, that this of mine should gain any strength of truth from my name alone, but from those authorities which I have designed and brought, both for elder, late and present times, out of such both printed and manuscript annals, histories, councils, chartularies, laws, lawyers, and records only as were to be used in the most accurate way of search that might furnish for the subject. Yet also I have not neglected the able judgments of such of the learned of later time, as give light to former ages; but I so preferred the choicest and most able, that I have wholly abstained from any mention or use here of those many ignorants that, while they write, rather instruct us in their own wants of ability, than direct to any thing that may satisfy. If through ignorance I have omitted any thing in the History or the Review, that deserved place in them; whoever shall admonish me of it shall have a most willing acknowledgment of his learning and courtesy. But all the bad titles that are ever due to abuse of the holiest obtestation, be always my companions, if I have purposely omitted any good authority of ancient or late time, that I saw necessary, or could think might give further or other light to any position or part of it. For I fought only truth; and was never so far engaged in this or ought else, as to torture my brains or venture my credit to make or create premises for a chosen conclusion, that I rather would than could prove. My premises made what conclusions or conjectures I have, and were not bred by them. And although both of them here not a little sometimes vary from what is vulgarly received; yet that happened not at all from any desire to differ from common opinion, but from another course of disquisition than is commonly used; that is, by examination of the truth of those suppositions, which patient idleness too easily takes for clear and granted. For the old sleepicks that never would profess that they had found a truth, shewed yet the best way to search for any, when they doubted as well of what those of the dogmatical sects too credulously received for infallible principles, as they did of the newest conclusions. They were indeed questionless too nice, and deceived themselves with the nimbleness of their own sophisms that permitted no kind of established truth. But plainly, he that avoids their disputing levity, yet, being able, takes to himself their liberty of inquiry, is in the only way that in all kinds of studies leads and lies open even to the sanctuary of truth, while others, that are servile to common opinion and vulgar suppositions, can rarely hope to be admitted nearer than into the base court of her temple, which too speciously often counterfeits her inmost sanctuary. And to this purpose also is that of *Quintilian*, most worthy of memory, *optimus est in discendo, patiens incredulus*.

For the sum of the performance in behalf of the clergy; I dare confidently affirm, that never before was there towards so much human law positive for the payment of whole tythes, observed to publick view, as is here discovered; and that especially in the viii. chapter for the clergy of *England*. And plainly he that talks of tythes, without reference to such positive law, makes the object of his discourse rather what he would have should be, than any thing that indeed is at all. For what state is in all Christendom wherein tythes are paid *de facto*, otherwise than according to human law positive? that is, as subject to some customs, to statutes, to all civil disposition. If they be in truth due *jure divino*, which divines must determine of, they remain equally so, as well after as before human laws made touching them. But that is a question daily controverted, and among the clergy. Now, whoever disputes it, and relies only on *jus divinum*, or the holy scripture, for the right of tythes, doth but make way for him whom he cannot persuade that they are due by the law of God, to think that they are no way due. Which questionless was the original cause of the opinions of such as falsely taught them not at all payable, but arbitrarily as alms, even since parochial right in them established. I mean the *Dominican* and *Franciscan* fryers, and those other of a far different stamp, *Wickliff*, *Erasmus*, and the like. Had they sufficiently thought of the constitutions and practice of christian states, whereby tythes had been variously dedicated for the maintenance of the evangelical priesthood, and settled for other holy uses either by continuance of time, by the owners conveyance, or by any such other civil title, the strength whereof is immediately founded in human law, what colour could they have had to think that they had been only alms? For whatever is lawfully established by a civil title, is clearly *debitum justitiae*, not *charitatis*. What brain then, except one bewitched, can think that human positive law, and common practice, which usually either declares or makes also a positive law, are not most carefully to be sought after in inquires touching this sacred revenue, which is no otherwise enjoyed in any state than as that law hath ordained and permits. And let human laws, practice, and opinions, be as their authors will; yet whatsoever argument may be found in the law of God for the right of tythes, remains still as untouched and equally of his former power, as the heat and light of heaven ever did, notwithstanding the use of fire had upon earth. And the

* Instit. orator. lib. 12. cap. 8

truth is, that divers of them that writ, with more will than judgment, for tythes, fall often from their *jus divinum*, before they are aware, and talk of them as supposed due also by human positive law of practice. But they are far enough from shewing what or where that law or practice is. What do they else when they confound tythes and consecrated lands together, and apply that to tythes which is equally to be spoken of lands given to the church? I trust they mean not that the church had an original title also *jure divino*, to lands arbitrarily consecrated to it. Let not then either the purpose or convenience of this history be valued, from what distempered malice, ignorance, or jealousy have cried it down with, in corners. The learned friar Bacon's most noble studies being out of the road of the lazy clergy of his time, were vehemently at first suspected for such as might prejudice the church. *Reuchlin* and *Bude*, the one for his *Hebrew*, the other for his *Greek*, were exceedingly hated, because they learned and taught what the friars and monks were mere strangers to. Others about their time had like fortune. Neither was any one thing in the beginning of the reformation so unwillingly received, or more opposed by such as laboured that ignorance might still continue in her triumph, than that singular light to the clearing of error, the *Greek* text of the new testament, first published in print by *Erasmus*. And it was ordained, as he says, under great penalty, in I know not what college of *Cambridge*, that no fellow of the house should be so impious as to bring it within the gates. For the world hath never wanted store of such blocks laid in the way of learning, as willingly endure not any part of curious diligence that seeks or teaches whatsoever is beyond their commonly received *nihil ultra*. But there are others that both can judge and do with for all light to truth. Such they were that even while ignorance yet held her declining empire, defended those worthies, *Bacon*, *Bude*, *Reuchlin*, *Erasmus*, and the rest that so suffered. And to doubt whether this of mine shall find such also, were but to question whether every man were yet a malicious rebel to truth, and wholly without ingenuity that performs even as much in fostering her, as time doth in breeding her.

But neither is the work alone taxed by mistaking of the subject, but also in regard of the author. What hath a common lawyer to do, so they murmur, with writing of tythes? For by that name it pleases them to stile me, and I must confess, I have long laboured to make myself worthy of it. But I would their discretions also would design out to whom it belongs more to write the *History of Tythes*, than to a common lawyer? I expect not such a sottishness, as that they should so much as dream it to be more proper to any of the other single professions of this kingdom, except to a divine, or a civilian; under which name, because those which practise the canon laws here, according as the common laws permit, take their degrees, in the civil law, I comprehend also the canonist; and use hath here made the name of civil law, to denote * both civil and canon. For the divine; what is there in the course of his study restrained to his profession, that can near enough instruct him in the laws and practice, especially of the christian time? Nor is the practice or laws of tythes among the *Jews*, as they are delivered and interpreted by their doctors, more indeed restrained to the course of divinity, than of law and history. But should a civilian rather have dealt with it? If he, then either, according to what we understand by that name in *England*, as a civilian, or as a canonist. If as a civilian; he should then have made that proper to himself, touching which, in the whole body of his law, though he take in also *Theodosius* his code, the *basilica*, and the *novels* of the later eastern emperors, not the least mention is found of tythes belonging to the church. Indeed, a case is put by *Ulpian* of * vowing of tythes, which some old ignorant and barbarous doctors understand of tythes among christians; but they were long since laughed at for it by him, that first † happily laboured in the restoring to that profession, the lost neatness and elegance of the text. That was clearly spoken of the *Roman* use only, and of vowing to *Hercules*, or the like. But should the civilian as a canonist have done it? What in all his decrees, decretals, and extravagants, though he join many armies of his doctors, directs him to the practice of the *Jews*, *Gentiles*, or *Christians*? Where shall the canonist or the civilian, or the divine, in the courses of their proper study, find the many secular laws made in behalf of the clergy for tythes? Where the ancient practice of payment? If it be clear then, as I hope none hath the impudence to deny it, that neither the divine, nor civilian, nor canonist, by the course of their own appropriated studies, can come to what is necessary in the knowledge of the *History of Tythes*, it will be as clear that none of them could challenge the meddling with it as a right especially belonging to any of their professions. But neither indeed is it proper to any one alone of those that are commonly made professions. The truth is, both it and not a few other inquiries of subjects too much unknown, fall only under a far more general study; that is, of true *Philology*, the only fit wife that could be found for the most learned of the Gods. She being well attended in her ἱερὰ δαίμωνια διακονήματα or daily services of inquiry, by her two handmaids curious diligence, and watchful industry, discovers to us often from her raised tower of judgment, many hidden truths, that, on the level of any one restrained profession, can never be discerned. And every profession takes from her to itself, as was long since ‡ observed, some necessary part not elsewhere to be sought for; not much otherwise than as the subltern sciences do from their superiors, or as they all do from that universality or first philosophy, which is but the more real part of true philology, and establishes principles to every faculty that could not of itself alone know how to

* Alberic. Gentilis de potestate regis absolutæ, seu dispot. 1.
in l. quicunque ff. de institutor. actione.

† Apud Mart. Capellam lib. 2.

* L. 2. Si quis ff. de pollicitat.

‡ Budæus libid. 3c.

Apud Mart. Capellam lib. 2. de nuptiis Philologiae & Mercenii. & de philologis ab-
quos veris consulas Quintilian. instit. orator. lib. 12. cap. ult.

THE HISTORY OF TYTHES.

Of them before the L A W.

CHAP. I.

- I. Melchisedech *had tythes only of the spoils of war given him by Abraham.* *Ανεθινα* denotes spoils of war, and perhaps also profits taken from the ground, or *ruta caesa*.
- II. Jacob's vow and payment of tythes. *Both Abraham and Jacob were priests when they paid tythes. In whom the priesthood was before the law?*
- III. *Whether any certain quantity were observed in the offerings of Cain and Abel?*
- IV. *A cabalistical operation in numbers, by which tythes and the first fruits, offered by Abel, might have a mystical identity. Such operations were amongst old christians also, but merely vain.*

I. **A**BRAHAM, in his return from redeeming his nephew Lot with his substance, and all the substance of Sodom and Gomorrah, was blessed by Melchisedech king of Salem, and priest of the most high God; and gave him tythe of all. So is the holy writ. But what that all was, is not clearly agreed upon. It is taken to be *לִי מִכָּל אֲשֶׁר לִי* *miccol aghsher lo*, that is, of all that he had, as the ordinary gloss of Salomon Jarchi there interprets; and expressly so are the Syriack and Arabick translations of the new testament, where this is spoken of. But it is hard to conceive it of any other all that he had, than all the substance, or all the spoils that he had by that expedition. The holy context so

points it out. So did the old Jews understand it. Otherwise never had so great and worthy an author, ^b *Flavius Josephus*, a Jew, confidently written the tythe there given to be *ἡ σάκατος τῆς λείας*, the tythe of what was gotten by the war. He knew a received opinion in his nation, to be so, or else had not been so forward to deliver it. The same is confirmed by the targum, attributed to Jonathan Ben Uziel. There of all, is interpreted *מִכָּל דְּאֵיבָא מִבְּרִיחַ* *miccal mah dabbeib*, that is, of all that he brought back. And, to free it from doubt, the holy author of the epistle to the Hebrews, first using the text of Genesis in those words, *ἡ σάκατος πάντων*, the tythe of all, after a few words interpolated, explains it by

^a Epist. ad Heb. 7. 2.

^b Archaeolog. ii. cap. 24.

Origen and others reckon him; which the form of his offering his son *Isaac* also justifies. He was never both first born and eldest of his family. For *Sem* lived after him about forty years, and kept that title from him: But a first born he was, and divided also from his father's household at the time of his tythes given. Whence observe by the way, that both *Abraham* and *Jacob*, according to this right of that time, must be priests also, when they paid these tythes. No other express mention is of tythes before *Moses* his time; unless, with the *Jews*, you dream, that the *Levitical* law was written before the creation.

III. Yet the antients seem to have observed a respect had to the quantity of what was, as a part of the yearly increase, consecrated in those times to the Lord; and that even in the first memory of sacrifice. *Cain's* offering was not regarded, they say, because *quod offerrebat non recte dividebat*, he did not well divide what he offered; which seems to design out a defect in the quantity; as if specially some *quota pars* were at that time required. But this reason was from no other cause than the mis-translation of the text in the story of *Cain*. For, where the original is thus, *Why is thy countenance cast down? If thou do well, is there not remission? If thou do ill, sin lieth at the door*; they read it far otherwise, and thus; *quoniam, nonne, si recte quidem offeras, non recte autem divides, peccasti? quiesce*: which is all one with the *Septuagint's* text, that in the primitive times was chiefly in use; *ταυτην εδωκεν, εδωκεν δε μη διδωκεν, διαφρασην ουκ εστιν. If thou offer well, but dividest not well, hast thou not sinned? Be quiet*. And this passage of well dividing, did *Julian*, that witty apostata, take for a special question to oppose a bishop in his time. But most agreeable to that translation, and not dissonant from the original, is, that he gave with a grudging mind, and not of the best and first of his fruit, as he ought to have done, and as the heathen ever did, or by their pontifical laws ought to have done in their *praemissum*, that is, the first fruits of their corn, or their *calpar* or *vinum inferium*, which was the richest of their wine. And it is expressly said, that *Abel* brought of his first fruits, but *Cain* only of his fruit of the ground; the one giving the Lord a portion of the best, the other not regarding of what time, what worth it were, so it were of his fruit. So, here is not any *quota pars*, or certain quantity noted, but *το πρωτον* or *πρωτον*, or the mind only of him that offered, and the quality of the oblation.

IV. Yet too, if some cabalistical and doting curiosities were of value, there might be some identity, or at least some affinity between the first fruits of *Abel*, and the tenth part. The first

fruits are in the text called *בכורת becorath*, the tythe *מקשר maighsher*. Now the *Jews* make great and hidden correspondencies betwixt things denoted by any two words, whose several numbers made out of their letters, are equal; their letters, as the *Greek*, being all numeral. And two kinds of this arithmetick they have: the one in greater numbers, which is frequent with them; the other in less. Their practice in the second kind is thus. Out of every centenary and decad of the letters of a word they take an unity, and add these to the rest, that is, the less numbers; by which operation, if two words agree in sum, they think forsooth some great mystery, of mutual relation, betwixt the things signified, is discovered. These two of the first fruits, and tythes, by this way, are equal. For example. Dispose the letters and their numbers thus,

ב כ ר ו ת
400.6.200.20.2.

ש ע פ
200.300.70.40.

In the first, out of 400. 200. and 20. take 4. 2. and 2. that is an unity out of every centenary and decad; and the sum is 8. which, added to the less numbers, make 16. Likewise in the second, out of 200. 300. 70. and 40. take 2. 3. 7. and 4. there being no less numbers, and you have the same sum as in the other, that is 16. But take this only as a taste of such impious liberty as these kind of vanities give amongst the *Jews*, to make any thing have mystical reference to every thing. Yet neither were christians without the very like in the primitive times. Witness the *Marcesian* and *Colabarsian* heresies in their *α*. and *ω*. made the same with *ωκεανος*, and divers other like by agreement in number. They indeed went so far in this ridiculous kind, that they determined *totam plenitudinem & perfectionem veritatis in istis literis (numeralibus) esse dispositam*. Witness the *Basilidian's* God, *Abrahas*. Nay, some fathers of those times so much regarded this arithmetical way of search, that in this very story of *Abraham's* success with his company of 318. and of his recovering the goods, the women and people, they deliver that the mystery of our Lord crucified, was denoted. That number 318. is in *Greek* thus, *τμ*. For they reckoned out of *Greek*, as the *Jews* out of *Hebrew*. In the 300. figured by *τ*. they supposed the cross foretold; as otherwise it is usually observed upon that of *Ezekiel*, cap. ix. 4. And *π*. they took for the two first letters of our Saviour's name *Ιησους* or *Jesus*. Whereupon *Prudentius* relating the victory, says, we should be very rich, as *Abraham* in his spoils,

¹ Terull. lib. advers. Iulacos, illi item sapient. ² Gen. iv. 7. ³ Cyrill. advers. Julian. lib. 10. ⁴ Ita D. Chrysost. in Genes. ⁵ D. Ambros. lib. 1. de Cain & Abel. cap. 7. & lib. 2. c. 6. vide epist. ad Hebraeos, cap. xi. 4. ⁶ Archangel. in dormas. ⁷ Terull. lib. de haeres. id genus plurima habes apud Epiphanium, tom. 1. lib. 1. cap. 1. & Irenaeum, lib. 1. cap. 10. ⁸ Clem. Alex. Stromat. 9. ⁹ In praefat. ad Iuxtae. ¹⁰ In praefat. ad Iuxtae.

*Si quid trecenti, bis novenis additis,
Possint, figura novaverimus mystica.*

where for *bis*, some copies, without sense, have *bis*. But who sees not the vanity of such mysteries? Although too, the unlimited liberty of our times, in so confidently daring to tell us the mystery of the number of the *beast*, would make a man give the more regard to these collections out of numbers. Every great clerk, that deals with it, hath, for the most part, his several word to make up 666. Some for us; some against us. And no doubt is (that one old one may be added) but he, which, long before *Luther*, made Sir *John Oldcastle's* name to fulfil that prophecy, thought he had been as near truth as the best of them. Out of *JOHN OLD-CASTEL* in numerals ^d he makes 701. and thence subtracts the year of his age, wherein he so charitably and stoutly took part with the *Lollards*, and was condemned for heresy, that is, 35. and the rest being 666. notes him out, says he, with the character of the *beast*. *Risum tenetis*? This in most miserable verse he expresses. Nor hath this dream of his, place here otherwise than as an old pattern of trifling boldness, used in the later arithmetic of many on that passage in *S. John*, in whom are ^e *tot sacramenta, quot verba*; and of whom the answer given by that doctor, *Calvin*, was as judicious as modest. He, being demanded his opinion, what he thought of the revelation, ^f answered ingenuously, *he knew not at all what so obscure a writer meant*. He might best have spoken it on this particular of the number; to which, found by arbitrary collection, whoever gives much credit, might unhappily perchance be induced to believe some mutual respect betwixt *Abel's* offering, and *Abraham's* tythes.

How, among the *Jews*, tythes were paid, or thought due.

CHAP. II.

- I. First fruits, and heave offerings, that is, sixtieth parts at least, first were paid out of the fruits of the earth.
- II. The first tythe was paid to the Levites, who out of that paid a tythe to the priests, and then the second tythe.
- III. The error of them that make a third tythe. The second tythe of every third year spent on the poor. What they take the year of tything to signify in Deuteronomy.
- IV. Above a sixth part was yearly paid by the husbandman; but no tythe by him to the priests.

V. How their cattle were tythed.

VI. A discontinuance of payment among them. *Honester overseers chosen for the true payment*. Demai, that is, things doubtful, whether tythes were paid of them or no. *Pasjages* in Epiphanius and S. Chrysostom, of their tything.

VII. Their tything of every herb. What their canonists hold tytheable.

VIII. Their law of tything, after the destruction of the second temple, ceased, by the doctrine of their canonists; which teaches also that they are not to pay elsewhere than in the land of Israel, and some adjacent countries. *Presbyteratus Judaeorum totius Angliae antiently granted by the English kings.*

THE yearly increase being either fruits of the ground or cattle; in the law, of fruits of the ground, first, the first of the forwardest ^g were offered to the priest in ears of wheat and barley, figs, grapes, olives, pomegranates, and dates. And, of these seven only, the first fruits ^h were paid in what quantity the owner would. Next, the *therumah* or *heave offering*, or first fruits of corn, wine, oil, fleece, and the like, were also ⁱ given to the priests. But it being not determined by *Moses* of what quantity this heave offering should be; the *Jews* antiently assessed it to be enough at the ^j fiftieth part; but so, that no necessity was that every one should pay so much; he that paid a sixtieth part was discharged; and many of the better devotion offered a fortieth. The fiftieth part they call *תרומה*, that is, an indifferent or competent *therumah*, or *heave offering*, which they named also *תרומה גדולה*, that is, the great *heave offering*; the fortieth they stile *תרומה קטנה*, that is, a *therumah* of a fair eye, or liberally given; and the sixtieth *תרומה קטנה*, that is, a *therumah* of an ill eye, or a niggard's gift. But you may observe too, that this, which they called a niggard's gift, was not beneath the quantity of the *therumah* appointed in ^k *Ezekiel*, where the words are; *This is the therumah that ye shall offer; the sixth part of an ephah of an homer of wheat; and ye shall give the sixth part of an ephah of an homer of barley*. It is the same as if he had said, *ye shall offer a therumah of the sixtieth part of every homer*. For an *ephah*, being the same measure with a *bath*; that is, near our common bushel, was the tenth part of an *homer*; therefore the sixth part of an *ephah*, the sixtieth of an *homer*. After the *therumahs* offered to the priests, every kind being given in season, out of the rest were taken the tythes; which are best divided into the first and second tythe.

^c Apoc. cap. xiii. 18. epist. ad Paulinam.

^d Thomas Elmham Prior Lenton. in chron. Hen. V. in bibliotheca Bodlejana.

^e Bodin. method. hist. cap. 7.

^f Exod. xxiii. 19. Levit. xxiii. 10. Num. xiv. 20.

Talmud in Seder Zeraim, Massechet Bicurim. atque inde recentiores eorum interpreti.

^g Exod. xlv. & Callianus collat. 21. cap. 3.

^h Deut. xviii. 4.

ⁱ Hieron.

^j In

^k Salomon

Jarchi ad did. locum. cacteri jurispr. & D. Hieronymus ad Ezek. cap. xlv. & Callianus collat. 21. cap. 3.

^l Ezek. cap. xlv. 13. & 11.

^m Hanc loquentis interpretationem habes apud D. Matthaeum, cap. xx. 13.

II. THE first tythe was ^a paid, out of the remainder, to the *Levites* at *Jerusalem*. By that name it is every where ^a titled. And, out of this tenth received by the *Levites*, another tenth they ^a paid to the priests, as a heave-offering out of their tenth, which they called also the *tythe of the tythe*. For the priests received no tythes of the husbandmen; only the *Levites* received tenths from them, and paid their tenth to the priests; being, as ^b S. Jerom says, *tanto illis minores, quanto ipsi majores populo*. So clergymen, by that example, have paid tythes to the pope; and so by a late ^c law they do in this kingdom to the crown. Neither might the *Levites* spend, to their own use, any part of their's, till this *tenth of the tenth* were paid. Afterwards it might be employed for their maintenance generally wherefoever. This first tenth paid; the nine parts remaining, were ^d accounted *חֲרִיף*, that is, *prophane*, or for common use; yet not to be spent by the possessor, till he had taken out of those nine ^e another *tythe*, which he was, the first two years to carry to *Jerusalem* in kind, or if the way were too far, to turn it into money, adding a fifth ^f part of the value: (for to this *tythe* do the *Jews* apply that of *Levit.* xxvii. 30, and 31.) and spend it there at the temple in feasts, which were near like to the old christians *agapae* or *love-days*. And every third year the same he was to spend upon the poor and *Levites* within his own gates. After those tenths thus disposed of, the remnant of that year's increase they called *חֲרִיף*, that is, as if you should say, *every way prepared or fit for common use, or absolutely lay chattels*; the first nine parts being so only respectively. This other *tythe* they filed their second *tythe*, or *tythe* for feasts, that is, ^g *חֲרִיף* *חֲרִיף* *חֲרִיף*.

III. Some make a third *tythe*; as ^h *Tobit*; expressly using the name of *חֲרִיף* *חֲרִיף*, a third *tythe*; *Και ὁ τρίτος*, says he, *ὁ ὅστις οὐκ ἐστὶν ἁγίος*. And the third *tythe* I have given to whom it was meet. But he means only the *tythe* of the third year, that is, the *tythe* which every third year, after the first *tythe* paid, was to be laid up by the husbandman in his own gates for the *Levite* that is within his gates, the stranger, the fatherless, and the widow. Which ⁱ *Josephus* also names *חֲרִיף* *חֲרִיף* *חֲרִיף*, a third *tythe* to be bestowed every third year; and this the rabbins call *חֲרִיף* *חֲרִיף*, that is, the poor man's *tythe*. And it is also titled a third; but falls better under the second of our division, and need not to be made a third, nor is it. Nor, by the great ^j *Scaliger's* leave, can it be accounted the first, nor doth it at all answer to that. For the first *tythe* was paid every year, saving the sabbatical. Otherwise, whence should the *Levites* and priests have their livelihood of that year? And so expressly affirm the great ^k doctors of the *Jews*; and that according

to their *talmud* or canon law; that the first year, first they paid the first *tythe*, then the second, so in the second year; and that, in the third year, after the first *tythe* paid, they paid the *חֲרִיף* *חֲרִיף*, that is, the poor man's *tythe*, and that year *חֲרִיף* *חֲרִיף*, that is, the second ceased, or was not paid. ^l *Ben-Maimon's* words are, that in the third and sixth years the poor man's *tythe* was *חֲרִיף* *חֲרִיף*, that is, instead of the second *tythe*. Neither can that in *Tobit*, touching the payment of the second *tythe* every year (wherein both the Greek and Hebrew of him agree, although in other things they much differ) be otherwise well understood, than for every of the two years, unless that text be wholly contrary to the known practice of the *Jews* canons. So then every third year, the *Levites* at the temple missed their second *tythe* for their feasts and love-days; the same being charitably, and by divine ordinance, spent at home in the gates of the husbandman. Neither doth the second, and this poor man's *tythe*, differ in substance, but only in circumstance. The division of both, is exactly the same, and the persons appointed for the eating, are upon the matter so too. For as the *Levites*, ministering in their course at the temple, were to have part in the feasts made of the second; so were the *Levites* and the poor in the country entertained with this of the third year. The place, wherethe bestowing was, makes their difference; substantially they are the same, and sely go under one name; which is fully to me confirmed by the *septuagint's* translation of that place in *Deuteronomy*, which we ^m read according to the Hebrew thus: *When thou hast made an end of thything, all the tythe of thine increase in the third year (which is the year of thything) thou shalt give to the Levites, strangers, fatherless, and the widow, that they may eat within thy gates, and be filled.* They there translate it. *Εαν ὅποτε λήσῃς διὰ τὸ ἐπὶ τὸν τρίτον ἔτος τὸν ἀπὸ γαιοῦν σου τὸ ἅγιον οὐκ ἐστὶν τὸ δέου-μενον ἐπὶ τὸν τρίτον ἔτος διδοῦν ἐπὶ τὸν ἅγιον τὸν τρίτον ἔτος; and that is, *When thou hast ended the thything of all the fruits of thy ground, in the third year; the second tythe thou shalt give to the Levite and the stranger, &c.* as in the common text. Where plainly, you see, the poor man's *tythe* is expressly called the second *tythe*, which justifies our division. Doubtless, they there instead of *חֲרִיף* *חֲרִיף* *חֲרִיף* *חֲרִיף* *חֲרִיף*, that is, the year of thything, as the text is, found in their Hebrew copies, *חֲרִיף* *חֲרִיף* *חֲרִיף* *חֲרִיף* *חֲרִיף*, which they took for the second *tythe*, knowing that in truth that place meant no other. Divers passages in their translations are upon such differences; and they often-times give thence a kind of commentary as well as a translation. Neither is it ill context, that *שְׁנִית* of the feminine gender should be joined to *מַגִּישָׁה* of the masculine; it is not without frequent example in holy writ. That their*

^a Num. xviii. 21.

^b Judaei passim, & Joseph. arch. lib. 4. cap. 7. Tobit. cap. 2. Gen. 7.

^c Num. xviii. 28.

^d Epist. ad Fabiolam, de veste sacerdotum.

^e Suet. 16 Hen. VIII. cap. 3.

^f Ben-Maimon in 1ad Chazela, part. 4.

^g Mallic. de decimis, cap. 3.

^h Deut. xiv. 23.

ⁱ Iarchi ad eund. locum.

^j Josephus lib. 4. arch. cap. 7.

^k Tobit. 1. 7.

^l Archaeol. 4. c. 7.

^m Diatrib. de decimis Judaeorum.

ⁿ Moſ. Mikotzi in miznagim.

^o c. 135. Ben Katzun, praec. 471. alii.

^p In Misnah Torah part. 3. de decima secunda, cap. 1.

^q Deut. xviii. 12.

word *תבואה*, not very usual for *tythe*, was most proper, and hath no worse original than *Athens* itself, where by that name, the tenth of mulcts and goods confiscate, was sacred to *Minerva*. But this place of the year of *tything*, is interpreted by the common gloss ^a of the *Jews*, by the year of *one tythe*, as if the text had been *שנת תשעה*, that is, the year of *one tythe*, or of *paying only one tythe*. Which in substance exactly agrees also with the meaning of the *septuagint*. For in the third year, says *Iarchi*, there was only one *tythe* paid of the two commonly spoken of, that is, of the first and second. The first was only paid to the *Levites*. The second, by that name, was not: but the poor man's *tythe* instead of it: And he so expounds it, that he takes the mention of the *Levites* there, to design out the first *tythe* of that third year paid at *Jerusalem*, which plainly also confirms what is here before declared. The second then, and the *tythe* of the third year are the same in substance. The payment of all appears in this example.

IV. After the first fruits paid in ears, admit the increase 6000 *ephabs*; the heave-offering at least must be 100.

The remainder 5900. The first *tythe*, 590. and out of this 59 to the priests.

The remainder 5310. Out of this, the second *tythe*, 531. which every two years the *Levites* had at *Jerusalem*, and every third year was spent in the gates of the husbandmen.

The rest being 4779, was kept for the husbandman.

So that of 6000 *ephabs*, the *Levites* and poor had in all 1263 whole to themselves, the priests 159, and the husbandman only 4779. He yearly thus paid more than a sixth part of his increase, beside first fruits; almost a fifth. Many of no small name, grossly slip in reckoning and dividing these kinds of their *tythes*. But this here delivered, is from the holy text and the *Jewish* lawyers.

V. Of their cattle; the first born were ^c the Lord's, paid to the priest of clean beasts in kind; of unclean in money, with a fifth part added. Of the increase of them, one *tythe* only was paid, and that to the *Levites*. Every *tythe* of bullock and of sheep of all that goeth under the rod, the tenth shall be holy to the Lord, says holy ^d writ. Thence at the *tything* they used to shut the lambs, for example, in a sheepcote, where the straits of the door might permit but one at once to come out. Then, opening the door, either gently to hunt them out, or by placing the ewes bleating near them without, so to cause them to run forth one by one, while a servant standing at the door with a rod coloured with oker, solemnly told to the tenth; which with his rod he marked. So they ^e understand

going under the rod; that so marked, whatever it were, male or female, worst or best, was the *tythe*, and might not be changed.

VI. How the payment of these tenths was either observed or discontinued, partly appears in holy ^h writ, partly in their institution of more trustly overseers, whom they called *סמנים*, for the true payment of them. For after the new dedication of the temple by *Judas Machabaeus*, until his fourth successor *Joannes Hyrcanus*, being near thirty years, all duly paid their first fruits and *therumahs*, but the first or second *tythe* few or none justly; and that through the corruption of those overseers. Whereupon their great *Sanhedrim*, or court of seventy elders (that is, the *בית דין הגדול*, that is, the greatest court, that determined also, as a parliament, of matters of state) enacted, that the overseers should be chosen of honest men; and withal, that of such things, whereof, by such corruption, or otherwise, it was indifferently doubtful, whether *tythe* were justly paid or no, of which kind, almost all increase, at the time of this act made, was, a heave-offering, or *therumah* of the tenth of all, that is, a hundredth part, should be given to the priests, and then the second *tythe* at the temple should be paid; but no first *tythe* or poor man's *tythe* was paid of any such things. These kind of goods they called *דמאי*, *demai*, whereof a special *massebeth* or treatise, is in the *talmud*, in the *feder zeraim*. From that act of the *Sanhedrim*, to the last destruction of the temple, it seems, the just payment of *tythes* continued; and thereof testimony is, for the time near the destruction, in ⁱ holy writ. But in *tything* and offering *therumahs*, the *Pharisees* were most curious and devout. They gave perhaps *tythe* after both the legal *tythes* paid, beside fiftieth parts, and sometimes thirtieths for their *therumahs*. So may be understood that of them, ^j *ἀπαρχὴν καὶ τὴν δεκάτην, οὗς ἀπαρχὴν ἐλάτουν, παραπονοίας τῆς πενήτητος ἀλάτις*, which you may interpret, they *tythed* what was already *tythed*, they gave first fruits, thirtieth parts and fiftieth parts. But I dare not justify the translation. Neither do I believe, that *Epiphanius* there sufficiently understood what they did in their *tythings*, nor is his meaning easily, I doubt, apprehended. The like may be, with modesty enough too, said of ^k *Chrysostom*, speaking of the *Jewish* legal liberality to the *Levites*. ^l *Ἐντοῦτο, λέγει ἡ, ὅτι Ἰουδαῖοι ἐλάτουν, δεκάτην, ἀπαρχὴν πάλιν δεκάτης, καὶ πάλιν ἄλλας δεκάτας καὶ πάλιν οὗς ἴσως παρακαίδευσαν καὶ οὐκ ἐλάτουν ἐν πάλιν ἄλλῳ λόγῳ*. *Offerse* (but how much the Jews gave to their *Levites* and priests) as tenths, first fruits, then tenths again, then other tenths, and again other thirtieths, and the ^m *scilicet*, and yet no man said they eat (or had) too much. So are his words, in two places of his works exactly the same; saving only that in one, the variety of

^a Xenoph. hist. Græc. 2.

^b Iarchi ad Levit. cap. 27. & Rambam in Mafsech, de primogenitiis, c. 7.

^c Rambam de decimis, cap. 9.

^d Ep. ad Hebr. cap. 7. 9.

^e In ferm. 107. *תוך ד' ימים*, tom. 6. pag. 297 & 297. 8. ii. capit. ad Philippienses, tom. 4. pag. 14.

^f Exod. 30. 11.

^g Exod. 30. 11.

^h Exod. 30. 11.

ⁱ Levit. 27. 26. & 32.

^j Paralip. 31. Malach. 3. & Nolum, cap. 13.

^k Epiphani. lib. 1. hæret. 16. Vide, si placet, Calaubon. ad-

^l vers. Baron. pag. 63. & 64.

^m Exod. 30. 11.

reading

reading hath *תשעאדיקעס* for *thirteenth*. I confess I equally am ignorant of both. Neither is his enumeration consonant with what the monuments of the *Jews*, or the holy text will warrant. Conjectures upon it, I leave to others. Some probable enough might here be brought, but I willingly abstain.

VII. That tything of * *כֹּחַ דְּאֵלֶּיךָ*, every herb which is spoken of in the gospel, and observed by the *Scribes* and *Pharisees*, was never commanded in scripture, nor by their canon law requisite, according to the opinion of their doctors, who restrain the payment of tythes to that *תְּרומָה*, that is, *thy increase*, spoken of by *Moses*; and comprehend not herbs under that name. They deliver indeed that by tradition from their fathers, all things growing out of the earth, and fit for man's meat, are tytheable, which their *9* lawyers thus regularly express, *כל אילן אדם תנשם שנעולין סן תרין דייב בתרומת* *כל אילן* that is, *every thing that is kept as mans meat, and hath his growth from the earth, must pay the beave-offering, and likewise tythe*; whence they make such herbs as are man's meat, tytheable, but all such as are not man's meat, they discharge of tythes; and out of that rule also they except whatsoever was gleaned¹ either out of ears of corn, or grapes, or had out of the corners of the field left in harvest. But, it seems, that for this payment of herbs, the *Pharisees* were of the truer side. Our Saviour likes well their payment, and expressly says, *they ought not omit it*, which admonition of his was to them while yet the *Mosaic* laws were not all expired by the *consummation* est.

VIII. After the second temple destroyed, and dispersion of the *Jews*, their law of first fruits, *therumahs* and tythes, with them ceased. For their doctors determine, that regularly no inhabitants, but of the land of *Israel*, were to pay any; although also among them be a wise exception for the lands of *Senaar*, *Noah*, *Ammon*, and *Egypt*, because the first is near their land of *Israel*, and many *Israelites* went thither and dwelt there, and the other three are round adjoining to their land of *Israel*. But they deliver that who so of them took the profits of land amongst the *Cutheans* or *Samaritans*, their old enemies, or elsewhere in *Aram*, and so, it seems, by consequent in any other land, saving which they except, was not to pay any; touching which point many special cases are put by *Rabbi Ben Maimon*. At this day, by their law they pay none. Those that live in their land of *Israel*, for want of their priesthood and temple. Those that live dispersed in other countries, both for that reason, as also for the other which restrains the payment of them to *Canaan*; and herein they all agree. But the great *Joseph Scaliger* says, he asked some of them, whether, if they might again build their temple, as after the captivity they did, their laws

of sacrifices, first fruits, and tythes, would be then revived? And their answer was, that to build it again, were to no purpose, because they had no lawful priesthood, there being not one of them that can prove himself a *Levite*, though many pretend to be so, and some bear also the office of a kind of priesthood amongst them. And, for example herein amongst our own ancestors, when the *Jews* lived here, they had, it seems, one general or high priest over them, usually confirmed at least, if not constituted, by the king, for life; as appears by record, proving that both *Richard* the first and king *John* did by their patents grant the same. The copy of it being a most rare example, and not from this purpose, take here transcribed: *Rex omnibus fidelibus suis, & omnibus & Judaeis, & Anglis salutem. Sciatis nos concessisse, & praesenti charta nostra confirmasse Jacobo Judaeo de Londoniis presbytero Judaeorum, prebyteratum omnium Judaeorum totius Angliae, habendum & tenendum quandiu vixerit, libere, & quiete, & honorifice, & integre, ita quod nemo ei super hoc molestiam aliquam, aut gravamen inferre praesumat. Quare volumus & firmiter praecipimus quod eidem Jacobo quoad vixerit presbyteratum Judaeorum per totam Angliam, garantetis, manteneatis & pacifice defendatis; & si quis ei super eo forisfacere praesumerit, id ei sine dilatione, salva nobis emenda nostra, de forisfactura nostra emendari faciat, tanquam dominico Judaeo nostro quem specialiter in servitio nostro retinimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut coram capitali iustitia nostra, sicut carta regis Richardi fratris nostri testatur. Teste S. Bathoniensis episcopo &c. Dat. per manus H. Cantuariensis archiepiscopi cancellarii nostri apud Rothomagum xxxi. die Julii anno regni nostri primo.* It is true, that *presbyteratus* might denote as well fellow lay eldership. But as unlikely it is that in that age the clergymen that were officers of the chancery, and most commonly drew the patents, at least judged of the language, would transfer their name of *presbyteratus* to any such signification. So also I suppose that any such lay or civil officer among them, could not have escaped often mention in the records of *Judaism*, yet remaining. Many of them I have perused, but never met with the name elsewhere than in this roll. But to this priest *Jacob* or other like him among them, no tythes, first fruits or *therumahs*, were, or are by their canons payable. And agreeing to them expressly herein is * *Eusebius*, who, amongst other of their *Mosaic* laws, puts their paying of tythes for one specially that was confined to the land of *Israel* and *Jerusalem*. For, first reciting that about eating the tythes in the place, * *which the Lord shall chuse to cause his name to dwell there*, which indeed is only spoken of the second tythe of the first and second years, and joining it with the general commandment

¹ Luc. 11. 42. Matth. 23. 23.

² Levit. 19. 9. & 10.

part. 1. memb. 28. cap. 171.

³ Deut. 26. 12.

⁴ In *Iad Chazeka tract. de therumah*, c. 1. & Mikotai in precepte 133.

⁵ *Avot* &c. *Avot* lib. 2. c. 4.

⁶ Ramb. part. 3. tract. de *therumoth*, cap. 2. & Mikotai in precepte 141.

⁷ Rot. cart. 1. reg. Joh.

⁸ Deut. xiv. 22. & cap. 16.

of tything, and with the precepts of the passover, of the feast of weeks, and of tabernacles, in which a certain place by such an indefinite designation is also mentioned; he adds at length with reference to them all; *Διὰ πόσων οὖν τῶν τόπων ἐπισταύσαντες οὐκ ἐπινοήσαντες τὴν ἐκαστὴν αὐτῶν ἀπὸ τῶν παραγῆναι ἢ παλαιῶν, πῶς αὖ ἐμελλέτω τῆς Ἰουδαίας εἶ, οὐ μίαν; ἀλλὰ πολλὰ, μέγα γὰρ τοῖς καθ' ἑκάστην ἐκαστοῦ ἔθνος; Seeing in so many things he designs out a particular place, so often commanding them to meet there, every tribe, every household, how can it fit them, or belong to them, that dwell but a little out of Judaea? Much left to the nations of the whole world. But those feasts he speaks of, the Jews, at this day, observe, although not accurately according to Moses his laws.*

Tythes how paid, or due among the Gentiles.

C H A P. III.

- I. Some Romans paid to some Deities, and sometimes only a tenth of spoils; of proceed of merchandize; of their estates; but usually also by vow, which bound the heir or executor.
- II. Festus is falsely cited for a general custom of payment of tythes among the ancients.
- III. Examples of tythes paid among the Grecians.
- IV. How the assertions of a general use of giving tythe to the gods among the Grecians, are to be understood; and why ἀεὶ νόμος, that is, to tythe, signifies also to consecrate.
- V. A tythe paid to Hercules of Tyre, and Sabis an Arabian deity, the same with Jupiter Sabazius.

THE custom of the Gentiles, usually talked of in offering a tenth, is chiefly to be considered in the Romans and Grecians. The Romans had a kind of devotion of giving tythes, but neither yearly, nor by compulsory law, as some falsely, but confidently, through ignorance in human literature, deliver. The wealthier of them, divers times used to tythe their estates to Hercules, by spending the tenth in sacrifices, gifts to his temples, feasts in his honour, and the like. It appears so, and to be no otherwise, by *Plutarch's* words, in his questioning the reason of it. *Διὰ τὴν, λέγει ἡ, τῶν Ἑλλήνων πολλὰ τῶν πλουσίων ἐκείνων τὰς βόας; Why do many of the rich*

men tythe their substance to Hercules? And elsewhere ^a *he, as other ancients, notes it as a special devotion of some of the sons of fortune. Neither is old* ^b *Cassius otherwise to be understood, where he derives Hercules his tenth from an innovation made by Recaranus in Evander's time. This Recaranus, he says, first taught them to give the tenths of their fruits to Hercules, to whom he consecrated an altar under the name of INVENTORI PATRI, after he had regained his herds that Cacus had stolen, rather than to the king, as before the use was; and then he adds, inde videlicet trallum ut Herculi decimam profanari mos esset; that is, thence came it to be a custom, that divers did pay him a tythe. But, neither by their law civil or pontifical, was this payment. Often it was as a thanksgiving after some increase of fortune, and often by vow beforehand, and for the most part, of increase of estate by money gotten upon sales, and of spoils of war. For such things that made accessions to their estates, they were sometimes so thankful. Whereat Cicero jesting, says, that never any man vowed Hercules a tenth, in hope of increase of his wit. Neque* ^c *Herculi quisquam decimam vocit unquam si sapiens factus fuisset. Of money gotten upon sale, an example is in the parasite, that, after reckoning up his good merchandize, says, he must sell it as dear as he can, that he may spend the tenth upon Hercules.*

^a *Haec vaenisse jam opus est quantum potest, Vti decimam partem Herculi polluceam.*

Whence the same author uses the name of *pars Herculana*: and ¹ *Tertullian*, speaking of the prodigality of the Gentiles in their feasts: *Herculanarum decimarum & polluciorum sumptus tabularii supputabant.* For spoils of war, witness is in that dedication of *Lucius* ² *Mummius*, which got Corinth, and settled it to the Romans, thus inscribed, and yet remaining at Riete.

^b *SANCO SEMIPATRI.*

De decuma victor tibi Lucius Mummius donum, Moribus antequam hoc pro usura dare sese, Visum animo sibi perfecti sa pace rogans te, Cogendo, dissolvendo ut facilia faxis, Perficias decumam ut sociat verae rationis. Propter hoc, atque alicis donis, des cuncta roganti.

Their *Sancus* was *Hercules*; whom they usually titled *Semo Sancus Deus Fidius*, and the title of this transcribed by some, is, *Sanco Fidio Semo patri*, which I rather think they mistake for *S. F. Semoni patri*. That *de decuma donum* was some special gift made with the cost of the tythe of the spoils; and *decuma verae rationis* is there for the best of discretion and policy;

^a In quest. Romanic.

^b De natura deorum lib. 3.

ab ff. C. 607.

^c In Lucullo, alibi & Diodor. Sicul. bibliothec. 4.

^d Plautus in Stichis.

^e In Truculentis.

^f Apud Aurel. Vict. in orig. gent. Rom.

^g In Apologicti cap. 39.

^h Anno

possent, hinc adnectere interpellum esse.

him. Of *Agis* and *Aceflaus* the like devotion is remembered. Other like examples are. Hence was *Apollo* called *δρατηφόρος*, as if you should say, *crowned with tythes*. And in regard the offerings to him were either the tenth, or given as in lieu of so much, they were stiled *δρατηφόροι ἀπαρχαί*, as if you should say, *first fruits in tenths*.

Ἄλλα τοι ἀμύτῃας δρατηφόροι ἀπὲρ ἀπαρχαί
Γίμποι—

says an antient ^b to *Delos*, where *Apollo* was born and worshipped; that is, *yearly first fruits in tenths are sent thee*. So I understand it. But also to others sometimes joined with him, the like offerings were. After *Pausanias* his victory against *Mardonius*, the money of the ^c tenth of the spoils was by consecration divided, between *Jupiter Olympius*, *Neptunus Ithnacus*, and *Apollo*; elsewhere ^d *Diana of Ephesus* participates with him. To other deities without him, sometimes was this honour given; as to ^e *Jupiter*: to whom also *Cypselus* ^f of *Corinth*, when he vowed all the goods of the citizens, if he could get the city, had especial regard to the tenth part, as competent to a deity; when to perform his vow, he gave yearly, for ten years together, the tythe of all their estates, and left them the nine for their maintenance and merchandize. And *Cyrus* admonished by *Croesus*, would not have the goods of the *Lydians* ^g ransacked by his soldiers, *οὐκ ἔστι ἀναγκαῖον ἕξει δρατηφόρου πρὸς Δί, because necessarily they were to be tythed to Jupiter*. Sometimes *Juno* hath this part; as in ^h *Samos*, the tythe of certain merchants goods was consecrated to her in a cup. *Pallas* sometimes hath it. Divers of the *Boeotians* and *Chalcidians* being taken prisoners by the *Athenians* and ransomed, the ⁱ *Athenians*, with the tythe of the ransom, consecrated a chariot to her. She also had among them the tythe of all goods ^k confiscate, and that they called *ἑρδιδρατήν*. And a tradition was among them of *Triapus* a genius of war, that at *Juno's* request taught *Mars* first to dance, and then made him a perfect soldier; that ^l *Juno* gave him for a perpetual salary, all the tythe of the spoils that *Mars* should gain in his victories.

IV. These examples among the *Grecians* are, for some kind of tythes vowed, or otherwise arbitrarily, or by some local custom paid to especial deities. But testimonies are not wanting among them, as general almost as that of *Festus* is for the *Romans*. Τὰ ἐκ τῆ (saith *Harpocration*, and, out of him, *Suidas*) παλαιῶν λαοδότην ἐπὶ ἀρχαῖς τοῖς θεοῖς. They used to tythe their spoils of war to the Gods. And *Didymus* ^m an old grammarian, tells us that *ἑρδ. ἢ Ἐλλωκερ τοῖς θεοῖς* τῶν παλαιῶν λαοδότην τοῖς θεοῖς ἐκαστοῦ, it was a Greek custom to consecrate the tythes

of their abundance to the Gods. From whence both he and *Suidas* fetch the reason why *δρατύναι*, to tythe, signifies also to consecrate, but therein they are deceived. Neither doth the Greek phrase to tythe, signify generally to consecrate; but in this notion it denotes only a special consecration of young *Athenian* maids, made to *Diana* in her feast *Brauronia*. None by their law was to ⁿ have a husband, but such as were then initiated to her; and none was to be initiated, but between five and ten years of age; from which utmost year, because for the most part till then they staid from the rites, the virgins to be initiated, were called *δρατύνες*, as if you should say, *ten yearlings*; and thence came ^o the word *δρατύνεα* to signify, to this purpose only, to consecrate or initiate, which otherwise was expressed by *ἀκατύνεα*. But if those grammarians meant that all men paid their tythes in Greece, and that of every kind of their spoils or abundance, they deceive much and are deceived. You must understand them as speaking of what was sometimes, and by vow or special thanksgiving, done. Their saying it was a custom to tythe, or that they tythed, is but like that of *Cassius*: *mos erat Herculi decimam profanari* among the *Romans*. It was a custom sometimes, and of some things to do it, as it was a custom to consecrate statues, hair, vessels, and other more such like to deities; yet were those customs no more general or binding all or done by all, than the custom, in some cities among us, to offer at wedding-days. It was a custom or use to do so; that is, many men did so. The examples before taken out of story make that plain. And in that sense only are these authors to be credited, touching the consecrating of tythes to the Gods in general. For sometimes they were generally given to the Gods, without any particular designed. *Suidas* ^p relates an example thereof, among the *Lydians*. And when the *Athenians* had divided *Lesbos* into 3000 parts, they ^q consecrated 300, that is the tenth, generally to the Gods. And *Pissistratus*, writing to *Solon* touching the tribute of a tenth, says, that he took tythes of every one of the people, not so much for his own use, as ^r *εἰς δόξαν δρατηφόροις, for publick sacrifice, or the use of the Gods in general*. And the tenth of what the cooks in ^s *Athens* killed for meat, was so due for a publick use in honour of the Gods, if any author deceive not.

V. Here may be added the *Grecians* use, the example of the ^t *Carthaginians*, that sent the tythe of their *Sicilian* spoils to *Hercules* at *Tyre*. And you may remember that *Arabian* law, wherein every merchant was bound to carry his frankincense to *Sabota*, (which the learned take to be *Saubatha* in *Ptolemy*, the chief city of *Arabia felix*) and there offer to their god *Sabis* the ^u tenth of it, which his

^a Xenophon. *Græc. hist.* 7. & in vita *Agesilai*.

^b Xenophon. *ἀρχαῖος Κύπρ.* 6.

^c Pausan. *Eliae. a.* & in *Phœciæ*.

^d Idem in *Melpom.*

^e Idem *ἀπὸ ἑρδιδρατύν.*

^f Hecych. in *ἀφελύσθω* & *Harpocration*, in *ἀφελύσθω*.

^g Lucian. *ἀπὸ ἑρδιδρατύν.*

^h Apud *Harpocrationem* in *ἀφελύσθω*.

ⁱ In *Μεσσην.*

^j Laert. de vit. philosoph. lib. 4.

^k Plin. *hist.* 12. cap. 14.

^b Callimach. in hymn. ad *Delum*.

^c Aristot. in *oeconomico*. 6.

^d Xenoph. *hist.* *Græc. lib.* 1. & videlicet *Messurium*

^e Suidas in *ἀφελύσθω*.

^f Tausydides lib. 7. τίς οὖν οὐκ ἔστι

^g Scholiast. in

^h Herodot. lib. 8.

ⁱ Herodot.

^j Suidas in *ἀφελύσθω*.

^k Suidas in *ἀφελύσθω*.

^l Suidas in *ἀφελύσθω*.

priests received. Neither might any sale be made of it till that was paid. *Sabis* doubtless was their *Bacchus*, *Uranus*, *Jupiter*, or *Sabazius*; which are one. For the deities of the *Arabians* were always accounted but two; the God *Uranus*, known also by those other names, and the Goddess *Urania* or *Venus*: It is nearest truth therefore, that their *Sabis* is the same with *Sabazius*, which was first corrupted from *Zabaotb*, commonly occurring in holy writ as an attribute to the only and true GOD. And as this name, so the payment of the tenth very likely came to them from the use of it among the *Jews*, their neighbours, as also to the *Carthaginians* from their ancestors the *Phoenicians*, that spake the same language with the *Jews*, and conversed most with them. Neither is it unlikely but that the ancient and most known examples of *Abraham*, gave the first ground, both to them and to the *Europeans*, so sometimes to dispose the tenth of their spoils of war to holy uses. For it is no news to have the eldest of *Jewish* customs usurped, though according to time and place diversly varied, amongst the *Gentiles*. What of later time is found among *Mahumedans* for the tenth paid, must be referred to the *Mosaic* law, which they receive as authentick, but keep it according to *Mahumed's* fancy, and the doctrine of his canonists. You may remember here *Eudemus* his relation of some kind of beasts in *Africa* that always divided their prey into eleven parts, but would eat only the ten, leaving the eleventh as *ἀπαρχὴν τῆς ὀνείκτου, a kind of first fruit or tythe*. So says my author, and take his word alone; I am not his surety.

In the first four hundred years after Christ.

CHAP. IV.

- I. No use of tythes occurs till about the end of this four hundred years. Offerings and monthly pay for maintenance of the church in the primitive times. *Divisiones mensuranae. Sportulae.*
- II. Payment of tythes of mines and quarries to christian emperors. The wealth of the church enervated.
- III. The opinion of Origen touching tythes.
- IV. Constitutions of those times, that mention them, are of no credit.

SINCE our Saviour, the time being about MDC. years, it will fall aptly enough so to divide that number quadripartitely, that we may discover the known use, opinion, and constitutions of every four hundred years, touching the

duty or payment of tenths, the difference or latitude of xx years, or some such number, either of increase or want, as occasion shall serve, being allowed, and the *English* law and use, because therein we shall be most particular, being referred to the last seven chapters. Till towards the end of the first four hundred, no payment of them can be proved to have been in use. Some opinion is of their being due, and constitutions also; but such, as are of no credit. For the first; 'tis best declared by shewing the course of the church-maintenance in that time. So liberal, in the beginning of christianity, was the devotion of the believers, that their bounty, to the evangelical priesthood, far exceeded what the tenth could have been. For if you look to the first of the apostles times; then the unity² of heart among them, about *Jerusalem*, was such, that all was in common and none wanted, and as many as were possessors of lands or houses, sold them and brought the price of the things that were sold, and laid it down at the apostles feet, and it was distributed unto every man according as he had need. And the whole church, both lay and clergy, then lived in common, as the monks did afterward about the end of the first four hundred years, as³ S. Chrysostom notes; ἅπαντες, says he, οἱ ἐν τοῖς ἱερουσαλήμοις ζῶντες ὡς ἀδελφοί, that is, so they live now in monasteries, as then the believers lived. But this kind of having all things in common, scarce at all continued. For we see, not long after in the church of *Antioch*, where christianity was first of all, by that name, professed, every one of the disciples⁴ had a special ability or estate of his own. So in *Galatia* and in *Corinth*, where S. Paul ordained⁵ that weekly offerings for the saints, should be given by every man as he had thriven in his estate. By example of these, the course of monthly offerings succeeded in the next ages. Those monthly offerings given by devout and able christians, the bishops or officers appointed⁶ in the church, received; and carefully and charitably disposed them on christian worship, the maintenance of the clergy, feeding, clothing, and burying their poor brethren, widows, orphans, persons tyrannically condemned to the mines, to prison, or banished by deportation into isles. They were called *stipes*, which is a word borrowed from the use of the heathens in their collections made for their temples and deities; neither were they exacted by canon or otherwise, but arbitrarily given; as by testimony of the most learned⁷ Tertullian, that lived about cc years after Christ, is apparent. *Neque pretio*, are his words, *ulla res Dei constat. Etiam si quod arcae genus est, non de oneraria summa quasi redemptae religionis congregatur. Modicam unusquisque stipem mensuaria die vel cum velit, & si modo velit, & si modo possit, apponit. Nam nemo compellitur, sed sponte confert. Haec quasi deposita pietatis sunt.* And then he shews the employment of them in those charitable uses. Some

² Celsus ap. Origenem lib. 3. Ariana. de gest. Alex. 3. Strabo lib. 11. Herodot. lib. 7.
³ Act. cap. 11. 34. ⁴ Hieron. 11. in ada.
vide Octavian. in oper. 90. dierum, cap. 107.

⁵ Ad. Apollol. cap. 11. 39.

⁶ Vide synod. Gangr. can. 66.

⁷ Apud Aelianum deei 2. lib. 4. cap. 17.
⁸ Epist. 1. ad Corinth. cap. xvi. 2.

⁹ Apologetic. cap. 39. & videlicet cap. 42.

authority^f is, that about this time lands began also to be given to the church. If they were so, out of the profits of them and this kind of offerings, was made a treasure; and out of that, which was increased for monthly, was a monthly pay given to the priests and ministers of the gospel, as a salary for their service; and that either by the hand or care of the bishop, or of some elders appointed as *oekonomi* or wardens. Those monthly pays they called *mensurnae divisiones*, as you may see in ^g S. Cyrian, who wrote, being bishop of Carthage, about the year ccc. and, speaking familiarly of this use, calls the brethren that cast in their monthly offerings, *fratres sportulantes*; understanding the offerings under the word *sportulae*, which at first in Rome denoted a kind of running banquets, distributed at great mens houses, to such as visited for salutation; which being oft-times also given in money, as you may remember out of *Martial*, the word came at length to signify both those salaries, wages, or fees, which either^h judges or ministers of courts of justice, received as due to their places; as also to denote the oblations given to make a treasure, for the salaries and maintenance of the ministers of the church in this primitive age; and to this purpose was it also used in laterⁱ times. But because that passage of S. Cyrian, where he uses this phrase, well shews also the course of the maintenance of the church in his time, take it here transcribed: But first know the drift of his epistle to be a reprehension of *Geminus Faustinus*, a priest, his being troubled with the care of a wardship, whereas such as take that dignity upon them, should, he says, be free from all secular troubles like the *Levites*, who were provided for in thythes. *Ut qui* (as he^k writes) *operationibus divinis inessebant, in nulla re a-vocarentur, nec cogitare aut agere secularia cogerentur*. And then he adds, *Quae nunc ratio & forma in clero tenetur, ut qui in ecclesia Domini ad ordinationem clericalem promoventur nullo modo ab administratione divina a-vocentur, sed in bonore sportulantium fratrum, tanquam decimas ex fructibus accipientes, ab altari & sacrificiis non recedant, & die ac nocte coelestibus rebus & spiritualibus serviant*. Which plainly agrees with that course of monthly pay, made out of the oblations brought into the treasury; which kind of means he compares to that of the *Levites*, as being proportionable. But hence also it is manifest, that no payment of thythes was in S. Cyrian's time in use; although some, too rashly, from this very place would infer too much. Those words, *tanquam decimas accipientes*, which continues the comparing of ministers of the gospel with the *Levites*, plainly exclude them. And elsewhere also the same father finding fault with a coldness of devotion that then possessed

many, in regard of what was in use in the apostles times, and seeing that the oblations given were less than usually before,^l expresses their neglect to the church, with, *at nunc de patrimonio nec decimas damus*. Whence, as you may gather that no usual payment was of them; so withal observe in his expression, that the liberality formerly used had been such, that, in respect thereof, tenths were a small part. Understand it as if he had said, *but now we give not so much at any part worth speaking of*. Neither for ought appears in old monuments of credit, till near the end of this first four hundred years, was any payment to the church of any tenth part, as a tenth, at all in use.

II. BUT some laws of this time yet remain, which shew that tenths out of mines and of quarries were paid, both to the emperor and to the lord of the soil; As in the ancient state of Rome the tenants of the empire paid for rent^m the tenth of their corn, whence the publicans that hired it, as the customers do here the king's customs, were called *decumani*. Those laws for the tenths of mines and quarries, were madeⁿ by *Gratian*, *Valentinian*, and *Theodosius*, christian emperors, about ccc.lxxx. and shew withal, that they thought not then of any tenth of such things, to be given otherwise; when indeed, however *Cyrian* might before have cause to complain in *Africk*, christian bounty in oblations, especially at Rome, and with proportion like enough in other churches, so enriched the clergy, that their wealthy happiness thence was much wondered at, and not a little, from thence, envied. For the then bishop of Rome his wealth from oblations chiefly, you may see^o *Marcellinus*. For other of the clergy, a whole sermon is in^p S. *Crispian*, that lived at the end of this first cccc years, against such as envied the wealth of the church, that grew only out of such christian devotion to the priesthood.

III. AS touching opinion in that time; *Origen* a great and most learned father, living about the year c.c. hath a whole homily^q upon the text of first fruits in the law; wherein while he teaches that some things are literally to be observed, he well admonishes, that it is the part of a wise interpreter to find out which are so, and which not. And then first he delivers his judgment, that this of first fruits is one to be observed still according to the letter, and gives this reason; *Decet enim*, (as the *Latin* is; the *Greek* I neither have, nor could ever learn that it hath been published) *& utile est etiam sacerdotibus evangelii offerri primitias. Ita enim & Dominus disposuit, ut qui evangelium annuntiant de evangelio vivant, & qui altari deserviunt de altari participant*; And a little after adds also for thythes: *Et ad hoc ut amplius bene ob-*

^f Urban I. in epist. c. 15. q. 1. c. 16. Sed & vide Euseb. eccl. hist. lib. 9. cap. 9. edit. Maximini, & lib. 10. cap. 1. edit. Constant. & in lib. 2. de vita Constantini cap. 39.

^g Cyrian. epist. 27. & 14. & vide epist. 36. editione Panniciana.

^h De decurion. l. 6. §. 1. & c. vi. de sportulis. & vide glossas Graecae. juris in *enclirion*.

ⁱ Concil. Chalced. A. D. 451. in libell. Samuelis & al. contra Iban. & videlicet tom. 1. concil. fol. 231. cap. 31. edit. Bini penultima.

^k Epist. 66. edit. Pannicel. ^l De unitate ecclesiae, §. 23.

^m Appian. lib. 1. & c.

ⁿ Annus. Marcellini. lib. 27.

^o Homil. in numer. cap. 15.

^p C. iii. de metallis l. 1. cunctis. & in c. Theodosius. lib. 10. tit. 19. l. 10.

^q Tom. 6. edit. Savilianus, pag. 197. *ὅτι καὶ οἱ ἀρχιερεῖς τῶν ἱερῶν, &c.*

servanda etiam secundum litteram ipsius Dei vocibus doceamur, addemus ad hæc; Dominus dicit in evangelis; Vac vobis Scribae & Pharisei, hypocritae, qui decimis mentam, hoc est, decimam datis mentae & cymini & anethi & praeteritis quae majora sunt legis. Hypocritae, hæc oportet fieri & illa non omitti. Vide ergo diligentius quomodo sermo Domini vult fieri quidem omnimode quae majora sunt legis, non tamen omitti & hæc, quae secundum litteram designantur. Quod si dicas, quod hæc ad Phariseos dicebat non ad discipulos; audi iterum ipsum dicentem ad discipulos. Nisi abundaverit iustitia vestra plusquam Phariseorum & Scribarum, non intrabitis in regnum coelorum. Quod ergo vult fieri a Phariseis, multo magis & majore cum abundantia vult a discipulis impleri. And a little after, Quomodo ergo abundat iustitia nostra plusquam Scribarum & Phariseorum, si illi de fructibus terrae suae gustare non audent, priusquam primitias sacerdotibus offerant & Levitis decimae separentur; & ego nihil horum faciens fructibus terrae ita abutor, ut sacerdos nesciat, Levites ignoret, decimum altare non sentiat? And in this form and upon these reasons, he brings in that of tenths in the gospel, to prove his purpose of first fruits. But in his conclusion upon it, he leaves out tenths, and speaks only of first fruits, thus. Hæc diximus, efferentes mandatum de primitiis frugum vel pecorum debere etiam secundum litteram stare. What we have transcribed shews both his opinion fully, and the ground of it; without which specially observed, error soon follows oft times in collection from authority. For opinion of this time, thus much. More, I confess, might be added out of some other great fathers, as S. Ambrose, and S. Augustine. But because they fall so near the end of our first age, and continue into the second, they are omitted here, and referred to the beginning of the next four hundred years.

IV. For constitutions of the church; if you could believe those supposed to be made by the apostles, and to be collected by pope Clement I. you might be sure both of payment in the apostles times, as also of an express opinion as ancient for the right of tenths. There you read: Quae secundum Dei mandatum tribuuntur, decimas dico & primitias, insinuat episcopus ut homo Dei. And the right is there largely grounded upon the Levitical commandment. But no man that willingly and most grossly deceives not himself, can believe that this constitution or divers others there, are of any time near the age of the apostles, but many hundred years after. The little worth, and less truth, of the whole volume is enough discovered by divers of the learned; and it was long since branded for a counterfeit in an oecumenical council, when, doubtless, it was not yet neither so stuffed with canons of later birth, as since it hath been. Neither are there greater arguments against it as now it is, than some passages of fact that obviously occur

in it, among which this may clearly go for one. Had it been the apostles ordinance or the use of the church in the primitive times, Origen, Tertullian and Cyprian, having such occasion to mention it, could not have been so silent of it. And is it likely that all the old councils, from thence till near oc. years after Christ, which being authentick beyond exception, have special canons for the lands and goods possessed by the church, the offerings, revenues, and such more could have omitted the name of tenths, if either such use or apostolical law had preceded? They talk of ἀλλοτρίων περιουσιᾶν, the goods of the church, κατὰ τοσοῦτον ἐκκλησιαστικῶν, or offerings of fruits; but have not a word any where of the tenth part. And in those counterfeited canons which some too credulously, and those also that wholly reject the eight books of Clementines, received as made by the apostles, one is indeed of first fruits (although, touching them by that name, certainly no law was made under the apostles) but no word of tenths. Of a like credit, it is to be feared, is that which is attributed to a fourth council at Rome, held about the year ccc lxxx. by pope Damasus. Indeed, upon cardinal Baronius's credit, in the Vatican the legend of this pope, which was used to be read in the church, is extant; and, with some miracles, are mixed in it certain decrees supposed his, and made in he knows not what council at Rome, of which one is; ut decimae atque primitiae a fidelibus darentur, & qui detraherent anathemate ferirentur, as he relates it. But those decrees, being taken out of the legend of him, neither ever were received as canonical in the church, nor hath the eldest code of the church of Rome, or Fulgentius, Cresconius, Isidore, Burchard, Ivo, or Gratian, mention of any of them. Not because what was taken to be truly his, was altogether wanting; for the canons of one council of Rome under him, his epistles, and some decrees are, and have been from ancient time, publick and dispersed in some of those compilers; and one especially they have of his time, which being made only for the disposition of such things as were given to the church, speaks only of oblations: but this of tythes or any of the rest joined with it touching usurers, witches, and other more, which Baronius only and first published to the world, out of the ms. none of them once remember. Neither before Binus his edition had any volume of the councils received into them a memory of any such decrees under this Damasus, or any council of his of that number. Those kind of acts and legends of popes and others, are indeed usually stuffed with such falsehoods, as being bred in the middle ages among idle monks, not only grow ancient now, but are received amongst us with such reverence, that the antiquity which the copies have gained out of later time, is mistook for a character of truth in them for the times to which they were first, by fiction or bold interpolation, referred. In sum, no example for the synods of succeeding

¹ Clement, in constit. apostol. lib. 1. cap. 25.

² Synod. 6. in Trullo, circa a. d. 690. can. 2.

³ Canon. 2. post. cap. 3. & 4.

⁴ Baron. annal. tom. 4. ann. 312. pag. 399. & 2. 314. pag. 417. edit. Plantiniana.

⁵ C. 10. q. 1. c. 15. hæc consuetudinem.

ages, no antiquity for the compilers of the canons, had been of equal reverence to this of a pope, and done at *Rome*; neither had they omitted every of those decrees, had they been truly his. Confidently conclude, they are supposititious, yet remember too, that some colour is for the truth of such a constitution, in regard that about that time, the first memory is of tythes by that name paid in the primitive church; as in the next part of this division shall be declared. And were that *7* epistle not counterfeited, which is attributed to *S. Jerom*, as writtén to this pope upon that question: *Utrum usus decimarum & oblationum secularibus percipere possit?* it might be good cause to maintain the truth of this decree of his for tythes. But plainly that epistle is alike feigned, neither tastes it of hun or of any time near that age; nor hath it been ever received among that most learned fathers works.

But not above one of these, and that is only provincial, is of any credit.

I. THAT they were offered under the name of tenths in part of *Italy*, may be collected out of *S. Ambrose* who was bishop of *Milan* before, and after the year ccc.xc. And the like for the diocese of *Hippo* may be supposed out of *S. Augustine's* vehement sermon for the payment of them. The words of both these fathers (which in relating their opinions are anon transcribed) may enough prove, that some did in those times offer them. And it may be, *2* *S. Jerom* pointed at the receiving of tythes then so offered, in those words of his, spoken in the person of a clergyman. *Si ego pars Domini sum & funiculus hereditatis ejus, nec accipio partem inter ceteras tribus, sed quasi Levita & sacerdos vivo de decimis, & altari serviens altaris oblatione sustentor, habens ² vicium & vestitum; his contentus ero & nudum crucem nudus sequar.* But it is no necessity to understand him so; it may well be, that *de decimis* there is but a continuance of the comparisón made by *quasi Levita*; as if he had said, *but live like a Levite that lived of the tythes, and, serving at the altar, am maintained by the offerings at the altar, &c.* What in *Gratian* is falsely attributed to him, is before remembered. In *Egypt* also, some holy abbots had tythes of all fruits offered them about the beginning of this age. *Certatin decimas vel primitias frugum suarum memorato scui (to abbot John) de suis substantiis offerebant,* ³ says *Cassian*, the hermit that lived about the year cccc.xxx. and the abbot receives the offering with this kind acknowledgment; *Devotionem hujus oblationis (cujus dispensatio mihi credita est) grateranter amplector, quia fideliter primitias vestras ac decimas indigentium usus futuras, velut sacrificium Domino bonae suavitatis offertis.* Where it appears the abbot received them as a treasurer for the poor. And about the year cccc.lxx christians also in *Pannonia*, by example of *S. Severin* his bounty, gave the tenth of their fruits to the poor. *Devotissime*, (says ⁴ my author that then lived also) *frugum suarum decimas pauperibus impendebant; quod mandatum, licet cancellis ex lege notissimum sit, tamen quasi ex ore angelis praesentis grata devotione servabant.* And a little after, he relates that the inhabitants of *Lauriacum*, which some take for *Lorch* in *Austria*, being often admonished by *S. Severin*, to pay the tenths of their fruits to the poor, had notwithstanding omitted it; whereupon, their corn being blasted, they humbly come unto him *poenas suae contumaciae confitentes*, acknowledging their loss as a reward of their fault. And the saint answers them; *Si decimas obtulissetis pauperibus, non solum aeterna mercede frueremini, verum etiam commodis possidetis abundare praesentibus.* Whence is seen both the received use of offering them in that place, as also the opinion of *Severin*. And in a provincial

From about the year cccc. till

DCCC.

CHAP. V.

- I. Tythes were now paid in divers places, to abbots, to the poor, to the clergy.
- II. Some consecrations were then made in perpetual right, at the pleasure of the owner.
- III. That story of Charles Martell his taking away tythes, and making them secular, cannot be justified.
- IV. The opinions of *S. Ambrose*, *S. Augustine*, *S. Jerom*, and *S. Chrysostom*. The first two teach, the tenth due by God's law; the other two persuade only that a less part should not be offered.
- V. Of canons, for the payment of tythes, that are attributed to this age.
- VI. No canon or other law was yet generally received to compel any payment of tythes, although among the offerings of devout christians, gifts of that quantity, were received as due, by the doctrine then in use, in some places only.

ABOUT the beginning of the next, or rather some years before the end of the first part of this division, and afterward, tenths were paid, or, for holy uses, offered, as the phrase was, in divers places, in offerings of that quantity; and some testimony is of churches also endowed with the perpetual right of them in the later half of this four hundred years. Great opinion was now of their being due. And some canons and provincial constitutions, attributed to this time, ordain a payment of them.

⁷ C. 16. q. 1. c. 61. quoniam. ut genuinae D. Hieronymi meminit etiam Innocent. 3. in extr. de his quae sunt a praelatis. c. 7. cum apud hunc.

⁸ & 2.

⁹ In epist. ad Nepotianum de vita clericorum.

¹⁰ Enggus in vita S. Severini, cap. 17. & 18.

¹¹ ad Tim. cap. 6. &.

¹² Collat. abbat. Theonae. 21. cap.

council

council at ^d *Mafcon*, held in the year D.LXXXVI. that is, the XXIII. of king *Gutheram*, by all the bishops subject to his government in *France*, the payment of tythes into the hands of the ministers of the church, is spoken of, as of good antiquity at that time, and grounded upon the *Mosaic* laws, which they call there *divinas*, and add; *quas leges christianorum congeries longis temporibus custodivit intemeratas*. That long time they speak of, might have had perhaps beginning from the doctrine of those two great fathers, *S. Ambrose*, and *S. Augustine*, about the year cccc. whereof, more presently. But observe also that *Leo* the great (he was pope from cccc.xi. to cccc.lx.) hath divers sermons, yet remaining, *de jejunio decimi mensis & elemesinis*, wherein he is very earnest and large, in stirring up every man's devotion, to offer to his parish church part of his received fruits, but speaks not a word of any certain quantity. The like may be noted in some homilies of *S. Chrysostom*, touching the churches maintenance, in which you might wonder how tythes were omitted, if either devotion or doctrine had near the beginning of these cccc years made payment of them, especially in the more eastern parts, of any common use. For the later part of those years, see towards the end of this chapter.

II. BUT beside the offering of tenths yearly (as was done, by the devout sort, sometimes to the ministers of the sacraments, sometimes to abbots, and the like) a perpetual right also of them was consecrated to some churches, by grant or assignment, out of such or such land, at the owner's pleasure; and that long before the end of this four hundred years. These especial endowments may be collected from a canon of a council of *Arles*, held in the year DCCC.XIII. which thus speaks: *Quæ ecclesiæ antiquitus constitutæ, nec decimis, nec ulla possessione priventur*. And other provincials of that time, and laws of *Charlemagne* agree with it; as that of his thus speaking: *Ecclesiæ antiquitus constitutæ, nec decimis, nec aliis possessionibus priventur, ita ut novis oratoriis tribuantur*. These cannot well be understood, unless you interpret them to mean churches antiently endowed with tythes. And what was then about the year DCCC. said to be antiently endowed, must be referred back into some part of the time we now speak of. Neither are the monuments of that time without example of such endowments. It is reported that *Pipin*, about the year DCC.L, granted the tythes of all that lay between *Ourt* and *Lesebe*, two rivers of *Ardainne*, to a church consecrated to the honour of *S. Monon*. So I take that in *S. Monon's* life. *Beato viro ob titulum christianitatis mactato Pipinus rex regulariter decimas obtulit, quas habet inter Le-*

tian & Urtam. So about the year ¹ DCLXXX. *decimanula in Rodulphi curte*, that is, the right of a tythe of small value, in a place called *Rodulphi's* court, was consecrated to the church of *Abras*. And in a confirmation by king *Pipin* of the foundation ^k of the abbey of *Fulda*, which was made in DCC.XLII. consecrations of tythes to the same abbey, either already made or thereafter to be made, are especially confirmed, whatsoever it had or thereafter should have in *donis, oblationibus, decimisque fidelium, absque ullius personæ contradictione firmitate perpetua signatur*, are the words. But these kinds of grants it seems were not yet in much use, and what was of them, I guess, might have beginning not long before DCC years from our Saviour. For if they had been known much before, the precedent of them could hardly have been omitted by *Marculphus*, who lived under king *Clotvis II.* about the year DCLX, and collected carefully the *formulae* or precedents of all kinds of deeds, conveyances, and grants, that were practised in his time; amongst which he hath many by the name of *cessiones* and *donationes*, wherein lands and other profits were given to this or that church, but never mentions any one for the gift of tenths.

III. IF the common tale of *Charles Martell* his taking away the tythes, that churches were endowed with, and giving them to the laity, about the year DCC.XL, were true, it were authority, both for general payment, and special endowment in those times, of great antiquity and fair proof. But although that of him he received as a story by divers of late time, yet clearly it can never be justified. He was indeed a robber of the church; but he is not mentioned by any old author of credit, to have meddled with tythes. He was *monasteriorum multorum everfor*, and *ecclesiasticarum pecuniarum in usus proprios commutator*, as ¹ *Boniface* archbishop of *Mentz*, that lived in his time, complains of him, that is, he took monasteries, bishopricks, church-rents, and possessions from the clergy, and prophaned them to lay-hands, as a reward of their military service then done for christianity against the *Saracens*, who from *Spain* invaded the country. Whereupon also, another fiction is too patiently received; ^m that *Eucherius* bishop of *Orleans*, in a vision saw him damned for it; and that by a search (according as an angel admonished) in his tomb, it was also confirmed for truth; there being found in it no reliqu of him, but only a dreadful serpent. The first author of this hobgoblin story seems of like credit with him, who ever he was, that first published that the taking of tythes was *Martell's* chief sacrilege. Tythes in his time were not so universally as yet annexed to churches, as that they could be the main object of such a sacrilege, nor

^d Maricon. concil. 2. cap. 6.

invidiam, tom. 6. edit. Savilliana, nular. lib. 2. c. 16. & vide lib. 2. cap. 164.

^e A. rebb. lib. 1. c. 15.

^f Bonifac. Mogunt. epist. 151. Aliæ sunt ejusmodi donationes Pipini regi & aliorum in relictis ms. ecclesiæ

Ultrajectensis, quod servatur in bibliotheca Cottoniana, & vide proximum caput de hac re.

^g A. Malmeis. lib. 1. cap. 4. quod tamen de Carolo isthoc ibi dicitur, in editis Bonitacii epistulis deest.

^h apud Suriium, tom. 1. 10. Febr. & vide Gratian. c. 16. q. 1. post canonem 59. edit. Gregorian.

ⁱ Vide eum in epist. ad Philippens. & sermonem 107. in eos qui clericorum opulentiam

^j Arelan. 4. c. 9. & vide lib. 6. q. 1. c. 21. 22. 23. 44.

^k Apud Mezzanum in S. S. Belgii in 18 Octobr.

^l Chronicon, Camerac. & A.

^m Antiquus capi.

ⁿ Legend. Eucherii

are they ever reckoned to among those antients, that largely speak of lay-mens oppression by defacing whole monasteries and bishopricks in the times that next succeeded. Neither is it clear that in *Eucherius* his life, *Martell* was dead; for it is observed and taught by that great and most learned cardinal *Baronius*, that he lived at least ten years after *Eucherius*. How then could *Eucherius* cause his tomb to be searched, and [there find a serpent? That's enough, and truth too, that *Boniface* brands him withal for his tyrannical spoiling the church of her other possessions; *longa torsione & verenda morte consumtus est*; the rest is only out of the legend of *Eucherius* his life, which, as other things for the most part of that kind, is too full of falsehoods to gain to itself any credit. And some late canonists that out of his tyranny against the church, interpret their *decimae infudatae*, or *feudal tythes*, are alike in no small error, as in the next age shall be manifested. For neither was the course then used in taking the church revenues for military maintenance, to give them in fee to any layman; but leases for life were made by churchmen, to such as the prince appointed, of great part of their possessions, whereupon certain small rents, according to a proportion ordained by the state, were reserved. Those leases were sometimes upon the princes request, renewed, but upon death of the lessee, the estate and possession reverted to the church. All which appears plainly in a council held in the year MCC.XII. under prince *Carolmann* son to *Martell*; where that, which was so leased, is called according to the phrase of the time, *ecclesiastical pecunia*, out of every *casata*, whereof a shilling was to be reserved to the church or monastery, whence it was granted. That *casata* was a quantity of land known certainly from the custom only of every country, as a yard land, or a hide of land with us. The same word, but varied in gender, often occurs in old charters of our *Saxon* times, especially in the lieger books of *Worcester*, and *Abingdon*. And in that of *Abingdon*, a charter is of king *Edwy* made to one *Britbric* of *quinque cassati terrae*, the title or rubrick being *carta quinque hydarum*; and another there is with the same rubrick, the words of the charter itself being *quinque mansae*; whereupon by a marginal note in an antient hand, one observes those two to denote but the same. *Nota*, says he, *quod hidae, cassati, & mansae idem sunt*. But this by the way. Of no less falsehood or upon other ground, than this fiction of *Martell*, is their relation which attribute to that synod under *Carolman*, these words, *decimas occupatas a prophanis restitimus*. Neither course nor any story of the time can justify it.

IV. For the opinions of fathers in the beginning of this age; first, *S. Ambrose* thus, in a

sermon of repentance, teaches them due by God's law. *Non nobis sufficit*, says he, *quod nomen christianorum praefeceramus, si opera christiana non facimus*. *Decimas nostras annis singulis de cunctis frugibus, pecoribus, &c. praecipit erogandas Dominus*. Then he cites the text of that precept, out of *Moses*, and goes on with *novem partes vobis tributae sunt, sed qui decimas dare noluisse ad solam decimam revertetis*. Next he reprehends other offences, and adds, *quicumque recognoscit in se quod fideliter non dederit decimas suas, modo emendet, quod minus fecit*. *Quid est, fideliter decimas dare, nisi ut nec pejus, nec minus aliquando Deo offeras, aut de grano tuo, aut de vino, aut de fructibus arborum, aut de pecoribus, aut de borto, aut de negotiis, aut de venatione sua?* *De omni substantia quam Deus homini donat, decimam partem sibi reservavit, & ideo non licet homini retinere illud quod Deus sibi reservavit*. Agreeing with him, is *S. Augustine* in a whole homily for the right of them; about harvest he made it (if it be his; for it hath been doubted whether it be his or no) on the xii Sunday after *Trinity*. *Proptio Christo*, says he, *fratres charissimi, jam prope sunt dies in quibus messes colligere debeamus, & ideo gratias agentes Deo qui dedit, de offerendis, imo reddendis decimis cogitemus*. *Deus enim qui dignatus est totum dare, decimam a nobis dignatur repetere, non sibi, sed nobis sine dubio profuturam*; and grounds himself upon that of *Malachi*, the text of honour the Lord thy God with all thy substance, and the like. Then exhorts them. *Decimae tributa sunt egentium animarum, redde ergo tributa pauperibus; offer libamina sacerdotibus*; and admonishes, that if they have no fruits of the earth, they should pay the tythe of whatsoever they live by; *Quodcumque te pascit ingenium, Dei est; & inde decimas expetis unde vivis; de militia, de negotio, & de artificio redde decimas, aliud enim pro terra dependimus, aliud pro usura vitae pensamus*. And then urging more texts out of the old testament, touching tythes and first fruits, and telling them, that the neglect of payment is the cause of sterility and blasting: *Hacc est*, he says, *Domini justissima consuetudo, ut si tu illi decimas non dederis, tu ad decimam revocaris*. And afterward, with much earnestness, *Decimas ex debito requiruntur, & qui eas dare noluerit, res alienas invasit, & quanti pauperes in locis ubi ipse habitat, illo decimas non dante, fame mortui fuerint, tantorum homicidiorum reus ante tribunal aeterni judicis apparebit, quia a Domino pauperibus delegatum suis usus reservavit*. *Qui ergo sibi aut praemium comparare, aut peccatorum desiderat indulgentiam promereri, reddat decimam*. These two great bishops agree; and from the law given to the *Israelites*, take their whole doctrine. *S. Jerom* is by some used for an author to the same purpose, and that from his

* Tom. 9. pag. 111. & 118. edit. Plantiniana. Sed vero in hac re alii aliter, & qui curiosius hic esse velis, praeter ea quae satis obvia sunt adeas Aduvaldi auctoris vetustissimi lib. 1. de miraculis S. Benedicci c. 14.
 1112. & Zacharias PP. ad eum epist. 141. A. D. 916.
 igitur hallucinari sune. in ipsa 2. synodo ista legentem fundatas pecunias ecclesiarum ecclesiarum restitimus, si in eodem vetustiss. ms. in thesaurio illo Constantiano. pecuniam autem decimas significasse opinabantur, sed perperam & ridicule. Pecuniae n. ibi praedia sunt.
 1 Tom. 9. serm. ser. 1. post. dom. 1. quadragesimae, & vide feram. in ascens. domini.
 2 Tom. 9. edit. Antwerp. atque ipsissima hujus vocabula habentur in tractatu illo suppositio b. Augustino talio tributo, & de rusticis catholicae conversationis, inscripto.
 3 Cap. 3. 10.
 4 I. e. vivendi genus.

commentary ¹ to the text of *Malachi*, which (after hath opened the words of the prophet, being only about the neglect of payment of tythes and first fruits; about the neglect of payment only, not the right of them) are these; *Quod de decimis primitiisque diximus, quae olim dabantur a populo sacerdotibus ac Levitis, in ecclesiae quoque populis intelligite, quibus praeceptum est non solum decimas dare & primitias, sed & vendere omnia quae habent, & dare pauperibus, & sequi Dominum salvatorem; quod si facere nolumus, saltem Judaeorum imitemur exempla, ut pauperibus partem demus ex toto, & sacerdotibus & Levitis honorem debitum deferamus.* Who hence thinks, that his opinion agrees with the other two, may as well infer, that he meant also, that all men were still bound to sell all they had, as in the apostles times. He speaks only, as admonishing christians to give their alms to the poor, and double ² honour to the labourer in the Lord's service, not binding them at all to offer this or that part, but leaving plainly a christian liberty; wherein yet, true devotion indeed, as he means, should not be more backward than the *Jews* were, when they duly paid. He that indifferently reads him, will think no otherwise. Neither is *S. Chrysostom* at all different from him. He perswading ³ even labourers and artificers to give bountifully their offerings to the church for holy uses, according to the apostolical ordinance in the churches of *Corinth* and *Galatia*, brings the *Jewish* liberality in their payments of tenths for an example, beneath which, he would not have christians determine their charity, and says withal, that he speaks these things *not as commanding or forbidding that they should give more, yet as thinking it fit that they should not give less than the tenth part*, ἀλλὰ αὐτοὶ μὴ ὀλιγότερον τῆς δεκάτης μεῖσιν ὑπερβάλλουσιν, as his words are, of all profits gained either from the earth, or by merchandize, or whatsoever just employment either of person or estate, but not of usury and war, which (at least as it was used in those primitive ages) was held by most doctors ⁴ of the time, as unjust as usury. And indeed, where it was just, there no part of the gain or spoils was to be given to the priests, by the doctrine of some ⁵ rabbins, that affirm it as expressly taught ⁶ within a text of *Moses*. But his exception of usury agrees with the canonists of late times, that will not have tythe paid of unjust gain, no more than ⁷ the hire of a whore, or the price of a dog, was to be brought into the temple. What is there called the price of a dog, is, by ⁸ *Josephus*, taken for money given for the loan of a dog to breed withal. You may add to the opinions of this time, that of ⁹ *S. Gregory*, where he admonishes the hallowing of *Lent*, consisting of six weeks, out of which, the sundays being taken, xxxvi days remain for the tenth part of the year, fractions of days omitted; this tenth of time he would have us give to God, *ut in le-*

ge jubemur, as his words are, *Dominio decimarum rerum dare.*

V. SOME canons, both pontifical and synodal, made for the right and payment of tythes, are attributed to the ages that fall about the middle of this time. But I have not observed above one, that is of any credit, as, referred hither; neither was that ever received into the body or any old code of the canons. That one is provincial, and made in the year D.LXXXVI. in the council of ¹⁰ *Mafcon*, a bishoprick in the diocese of *Lyons*, where all the bishops of king *Guntheram's* kingdom being present, speak of reforming ecclesiastical customs according to an ancient example, and then begin with, *leges divinae, consulentes sacerdotibus ac ministris ecclesiarum, pro haereditaria portione omni populo praeceperunt decimas fructuum suorum locis sacris praestare, ut nullo labore impediti per res illegitimas, spiritualibus possint vacare ministeriis; quas leges christianorum congeries longis temporibus custodivit intemeratas. Unde statuimus ut decimas ecclesiasticas omnis populus inferat, quibus sacerdotes aut in pauperum usum aut in captivorum redemptionem erogatis, suis orationibus pacem populo ac salutem impetrent.* Here is no small testimony as well of ancient practice in paying of them, as of great opinion for their being due. But although the whole council hath to this day remained with the subscriptions of the bishops to it, yet, whatever the cause was, not so much as any canon of it is found mentioned, as of received authority in any of the more ancient compilers of synodal decrees, notwithstanding, that the fullest of them, I mean *Isidore*, lived long after this council held, and hath some other synods of the continent of *France*, as of *Orleans*, of *Arles*, of *Agatha*. But this he mentions not. The first that published it, was friar ¹¹ *Crab*, in his edition of the councils under *Charles V.* Yet also in some that collected the canons since *Isidore*, decrees of elder time than that is, are to this purpose spoken of; as you may see in *Ivo* ¹² at the end of the decretal of *Gelasius*, that was pope in the year cccc.xcix, where these words are annexed, *decimas iusto ordine non tantum nobis, sed majoribus nostris visum est, plebibus tantum ubi sacrosancta dantur baptismana deberi.* This stands continued with the rest of *Gelasius*, in the print. But in an old and very fair copy, near as ancient as *Ivo*, remaining in the library at *Paul's*, these words begin with a coloured capital, as a several paragraph; and indeed are not *Gelasius* his, but pope *Leo's* the fourth, who lived above ccc.l years after; that appears plainly out of the epistle ¹³ of *Gelasius*, whereto they are annexed, which *Gratian* hath in all, saving this, according to *Ivo*, yet cites this passage in another place ¹⁴ by itself, out of that *Leo*, from whom also it is likewise taken by *Aescim* and *Gregorius presbyter*, who have in their collections

¹ Ad cap. 3. *Malacchie*.

² 1 Tim. v. 17.

³ Hom. 41. ad epist. 1. ad Corinth. in cap. 16.

⁴ Videlicet

⁵ Lactantius lib. de vero cultu cap. 18. & Tertull. de corona militis.

⁶ Abrah. Ben-katan. praecept. 101.

⁷ Deum. cap.

xxviii. 1.

⁸ Ibid. cap. xxviii. 18.

⁹ Origin. Judaic. lib. 4. cap. 7.

¹⁰ Homil. 16. in evang. & dist. 5. de

consecrat. c. 16.

¹¹ Mafficon. 2. can. 51.

¹² Tom. 2. concilior. fol. 90.

¹³ Decret. part. 3. cap. 115.

¹⁴ C. 12. q. 2. & 25. &c.

¹⁵ C. 16. q. 1. c. 45.

the rest of *Gelasius* his epistle according to *Ivo*, as it is noted to the text published by command of *Gregory* the thirteenth. And in those decrees^m of *Gelasius* that are extant touching the church-treasury, or revenue, no mention is of other than of *redditus ecclesiae* & *oblaciones fidelium*. A like falsehood is committed by themⁿ that attribute a provincial constitution touching the distribution of tythes amongst the bishops and inferior ministers to the first council of *Orleans*, held in the year D.VII. and that by finding some words to this purpose added to a canon, which in the printed *Ivo*^o hath a marginal reference to some council of *Orleans*. It is most certain, that the first council of *Orleans*^p hath no word of tythes in it, but speaks of the distribution only of such things as in *altario oblatione fidelium conferuntur*, and possessions of other like kind of church-lands, and according to that, *Burchard* and *Gratian*^q cite it; who have also those words that *Ivo* there hath, excepting only that of tythes. And some other provincials of the same place and age, to the same purpose, speak afterward of *oblaciones* & *facultates*, but not a word of tythes. All which shews plainly that no such matter was ever in the first council of *Orleans*. The truth is also that *Ivo* himself cites it not out of any council of *Orleans*, but from I know not what council of *Toledo*, as his ms. copy is, and as it is truly published in the printed book; all that directs to the council of *Orleans* there, being only the marginal note of *du Moulin*, a canonist of *Louvain* that let it forth. But neither any of *Orleans* or *Toledo* hath it all as he relates it. The truth is; that canon of his is made up out of two councils indeed, the first^r of *Orleans*, and the ninth of^s *Toledo*, and agrees well with both, saving for so much as is expressly spoken of tythes. That which in those two had been ordained for offerings and other revenues of the church, he not unskilfully applies to tythes, being a more known part of that revenue in his time; and thither draws also an old council of^t *Rome*, as if it had spoken expressly of them, and writes all in no other syllables than^u *Burchard* had before delivered with a like title of *ex concilio Toletano*. But this excuses not those which make the words of such a collection, out of two or three old councils, applied to a later time, to go for a canon of any one of them. Many such are occurring in *Burchard* and *Ivo* especially; and some in *Gratian*; which are noted upon their credits, and, in some editions, placed in the times to which they attribute them, *licet forsitan falso sint tali pontifici, vel certe tali concilio per scriptum incuriam adscripti*, as friar^v *Crab* well admonishes. A like falsehood is in attributing, out of the same^w *Ivo*, an express canon for the payment of first fruits and tenths, to the provincial synod of *Sevil*, held in the year D.CX. in these words. *Omnes primitias & de-*

cimas tam de pecoribus quam de frugibus, dives simul & pauper ecclesiis suis recte offerant; and a little after, *omnis rusticus & artifex quisque de negotio iustum decimationem faciat*; and then, *si quis autem haec omnia non decimaverit, praeco Dei est, & fur, & latro*; & *male-dicta quae intulit Dominus tibi Cain non recte dividendi congeruntur*. There is little reason to doubt, but that the reference of that canon in him, to that council of *Sevil* is false. The council of that year and place is extant whole, in divers editions, as it was certified by eight bishops which were at it; and in that no taste is of any such matter. The old ms. copy of *Ivo*, of or very near his time, in the library of *Paul's*, hath it *ex concilio Spanensi*, the printed book being *ex concilio Hispanensi*. What *Spanensi* is, I know not; if it were *Spalensi*, it were the same with *Hispanensi*, for which *Spanensi* is always in *Isidore's* councils, as *Spain* is sometimes^x antiently for *Hispania*. Whatever he meant by it, clearly the whole canon is of much later time; the first words of it also being nothing but the syllables of one of *Charlemagne's*^y laws, that was not made till DCC.LXXX years from Christ: that is, *unicuique ecclesiae mansus integer absque ullo servitio attribuitur*; where *mansus* is for a farm or dwelling place, in the same sense as at this day *manse* is used in the laws of *Scotland*. Some others like these occurring are mistaken, and you may observe that *Gratian* more warily abstained from using such canons mis-titled; among which also, from these. But the less falsehood is to be imputed to *Ivo*, in regard that *Burchard* before him had almost all his syllables; from whom he transcribed; yet that excuses not his negligence committed in not carefully examining his author; which often causes gross impostures, sometimes proceeding from malice sometimes from ignorance, to be received as perfect truth; especially by those that cite, without more regard, provincial synods absolutely there mentioned for the first of that name, when indeed they are often of far later time. Slothful readers are soon so deceived. But among the known and certain monuments of truth, till about the end of this cccc years, no law provincial, or synodal (saving that of *Mascon*) determines, or commands any thing concerning tenths; although very many are which speaking purposely and largely of church revenues, oblations, and such like, could not have been silent of them, if that quantity had been then established for a certain duty. You may see^z enough in those to which the margin refers you; all made in this part of our division; none using other words, to this purpose, than *facultates*, *praedia*, *relicta*, *res ecclesiae delegatae*, or *collatae*, and the like, as the phrases are in the other first cccc years; some of which kind yet the canonists and others, in

^m Decret. Gelasii, cap. 39.

ⁿ Concil. Aurel. 1. cap. 9. 10. & 11.

^p Arelat. 1. cap. 11.

^q cap. 136.

^r Palladius hist. Lausaca in Melana & in concilio Sardicensi subseribit.

^s capitular. lib. 1. cap. 91. quod ipsum canonem habet Ivo part. 16. cap. 262.

^t Synod. Rom. c. 4. & 6. edict. Leonis & Anthemii c. de sacro, eccles. 1. 14. Iobennus, &c. c. 10. q. 2. c. 2. novell. 120. & 131. conc. Paris. 1. cap. 1. Turonens. 1. cap. 16. Bitharent. 2. cap. 1. leg. W. Aligothorum, lib. 3. &c.

^u Ex Binio in tom. 1. concil. alii, qui de hac re agunt.

^v C. 10. q. 1. c. 7. de his.

^w Synod. Rom. sub Sylvestro papa, cap. 4.

^x Part. 3. c. 174. Garfias apud Iovinian in tom. 2. concil. ex eo alii.

^y Officiis ab Hispania & Collis ab Syon.

^z Synod. Agath. c. 4. & 7. & 47. synod. Rom. 4.

^{aa} Antiquiss.

^{bb} Decret. lib. 3. cap. 15.

^{cc} Decret. lib. 3. cap. 15.

^{dd} Decret. lib. 3. cap. 15.

^{ee} Decret. lib. 3. cap. 15.

^{ff} Decret. lib. 3. cap. 15.

^{gg} Decret. lib. 3. cap. 15.

^{hh} Decret. lib. 3. cap. 15.

ⁱⁱ Decret. lib. 3. cap. 15.

^m Decret. lib. 3. cap. 201.

ⁿ Concil. Aurel. 1. cap. 5. & Aurel. 5. cap. 15.

^p Decret. lib. 3. cap. 15.

^q Decret. lib. 3. cap. 15.

^r Decret. lib. 3. cap. 15.

^s Decret. lib. 3. cap. 15.

^t Decret. lib. 3. cap. 15.

^u Decret. lib. 3. cap. 15.

^v Decret. lib. 3. cap. 15.

^w Decret. lib. 3. cap. 15.

^x Decret. lib. 3. cap. 15.

^y Decret. lib. 3. cap. 15.

^z Decret. lib. 3. cap. 15.

^{aa} Decret. lib. 3. cap. 15.

^{bb} Decret. lib. 3. cap. 15.

^{cc} Decret. lib. 3. cap. 15.

^{dd} Decret. lib. 3. cap. 15.

^{ee} Decret. lib. 3. cap. 15.

^{ff} Decret. lib. 3. cap. 15.

^{gg} Decret. lib. 3. cap. 15.

^{hh} Decret. lib. 3. cap. 15.

ⁱⁱ Decret. lib. 3. cap. 15.

provincial synods, have in the later ages, compiling their decrees, made to serve as if they had expressly named tythes, as you may see in that example remembered before out of Ivo, and Burchard; in that of the council of Gangra in c. 16. q. 1. c. 57. in canonibus; in that of the 29th chapter of Gelasius his decree in the council of Tribur held DCCC. XC. cap. 13; in that of the first oecumenical council of Chalcedon cap. 17. in c. 14. of the same synod of Tribur; and in that of the ninth council of Toledo^a in an old council of Cologne. He that reads those old canons only, as they are so applied, in late authority, to tythes, might perhaps soon think that at first they were made specially and by name for them. The matter is plainly otherwise. What was ordained in them about oblations, is out of them in later times, tythes and oblations being then supposed of equal right, expressly extended also to tythes; the word oblations, as you see in those times, being usual for tythes also when they were given; and *offerre decimas* was the common phrase, for to give tythes. About the end of these years in a provincial synod held at Friuli in DCCC. XCI. under Paulinus patriarch of Aquilegia, the words are, *De decimis vero vel primitiis, satis scilicet allegoricarum rerum mysticis sacramentis, nihil melius puto dicere quam quod scriptum est in Malachia propheta, dicente Domino; inferte unum decimam in borreum meum, &c.* and upon that place, the supposition of the duty being grounded, a commination is added; *Quis non timeat vel contremisat illam maledictionem quam minatur nolentibus offerre?* The opinion of the synod is here plainly seen; and it is rather a declaration by doctrine, than a constitution by precept.

VI. But however either this of Friuli, or that before cited of Mascon, had their provincial authority, no canon as yet was received in the church generally, as a binding law, for payment of any certain quantity; Which not only appears in that we find none such now remaining, but also is confirmed by the testimony of a great and learned French bishop, in whose province also Mascon was, that could not be ignorant of the received law of his time. He lived and wrote very near the end of this four hundred years, I think, in the very beginning of the next. And, in a treatise about the dispensation of church revenues, expressly denies, that before his time, any synod or general doctrine of the church had determined or ordained any thing touching the quantity that should be given, either for maintenance or building of churches. Because his words are special authority also against those counterfeit titles of canons before spoken of, if they shall have place here. *Jam vero, scit^e he, de donandis rebus & ordinandis ecclesiis nihil unquam in synodis constitutum est, nihil a sanctis patribus publice praedicatum. Nulla enim compulsi necessitas,*

servente ubique religiosa devotione & amore illustrandi ecclesias ultro aequante, &c. This author is Agobard bishop of Lyons, very learned and of great judgment, and had not so confidently denied what you see he doth, if any decree, canon, or council generally received, had before his time commanded the payment or offering of any certain part. How the authority of that council of Mascon stands with his meaning, I well conceive not. But clearly, he speaks truth, in regard of what was generally received. For neither in the *codex ecclesiae universalis*, or the *codex ecclesiae Romanae*, or *Africanae*, Fulgentius Ferrandus, Cresconius, or Isidore's collection (all which, in those elder ages, were as parts of the body of the canon law) is once any mention of the name of tenths. And indeed, that council of Mascon, with all other church laws in France, lay a long while neglected before Agobard's time, as in the age of our fathers that of Mascon likewise did. Yet withal, no doubt can be made, but that in most churches in this time, amongst the offerings of those of the devouter sort, tenths, or greater parts of their annual increase were given, according to the doctrine of those fathers before-mentioned, and those other testimonies. Whereto you may add that complaint of Boniface^b archbishop of Mentz, about D.CC. against the clergy. *Lac & lanas, lays he, ovium Christi oblationibus quotidianis ac decimis fidelium sustipiunt, & curam gregis Domini depouunt.* And in an exhortation^c written near D.CCCC. years since: *Ille bonus christianus est qui ad ecclesiam frequentius venit, & de fructibus suis non gustat nisi prius ex ipsis Domino aliquid offerat; qui decimas annis singulis pauperibus reddit; qui sacerdotibus honorum, &c.* These also shew a use of payment among the firmer and devouter christians in those times. But they were then disposed of diversly; now you see to the priests, now to abbots, now to the poor, and when they were offered to baptismal or episcopal churches, they were received as indefinite offerings, the quantity whercof was wholly arbitrary, in respect of any constitution or general law in use. The quantity of the offerings was arbitrary, but some kind of offering was necessary. He that offered not at all, of his fruits, was compellable, it seems, by excommunication (as in the eastern church; where that compulsion also was taken from the churches authority in the patriarchat of Constantinople) but not as yet, he that offered a less quantity. And that it was a special bounty to offer the tenth, you may see in the old *Ethiopian*^d mass, where a distinct prayer is for those, *qui obtulerunt munera sanctae unice, quae est super omnes, ecclesiae, sacrificium scilicet primarum decimarum, gratiarum actionis signum & monumentum.* And it seems the disposition of the offerings were so in the parson's power, by the practice of some places, that he might

^a Burchard, lib. 3. cap. 137. & Ivo part. 1. cap. 101.

176. edit. Messiniana. Parisiis.

nitae. cap. 9. & 10.

in biblioth. Cotton.

legendum primarum & decimarum.

^b Bonifac. arch. Mogont.

^c Epist. 105. ad Cuthbertum arch. Cantuariensem.

^d Pious. Nicomac. lib. 4. & c. de episcopis & clericis. l. 29.

^e Agobardus Lugdunensis de dispensatione &c. contra sacilegos, pag. 132. Zacharias PP. ibid. epist. 143. & Willibaldus in vita Bo.

epistolam ibi videlicet num. 107.

^f MS.

^g Biblioth. patrum, tom. 4.

^h Forte

assign a^m certainty of them to the minister of his church, and employ the rest at his pleasure; which agrees enough with the right challenged, in the succeeding ages, touching investiture and arbitrary consecrations; whereof, more in the next cccc. years, although in this age also some canonsⁿ of the clergy subjected all new built churches to the bishop's government; but were little obeyed. For meer church laws, hitherto. Some secular constitutions are, that about the year D.CC.LXXX. were made for the payment of tythes, by *Charles* king of *France, Italy, and Lombardy*, and afterward emperor. But because they fall so near the end of this part of our division, and are rather to be accounted amongst the laws of his empire (which began not till near xx. years after; that is, about D.CCC.) than only of his kingdom, and were afterward received into the imperial capitularies, whence we have chiefest notice of them; they are purposely referred into the next cccc. years, as the first latitude, required in our division, permits. Neither before them, did any general law, that yet remains in publick, and is of credit, ordain any payment of tenths in the western church. For, in the eastern, never any law, that I have observed, mentions them.

Between about the year D.CCC.
and near M.CC.

CHAP. VI.

- I. Payment of tythes, how performed.
- II. Arbitrary consecrations of them alone, like grants of rent-charges, at the lay owner's choice, to any church or monastery, were frequent; and sometimes lay-men sold them to the church. Redimere decimas.
- III. Appropriations of them with churches; wherein they passed as by themselves, from the patron severally and directly in point of interest. The beginning of parish churches. Disposition of the offerings received there. Lay foundations of parish churches. The interest that patrons claimed. Right of advowson. The ceremony of putting a cloth or robe upon the patron, at the consecration of the church. The use of investitures, by which (as by livery of seisin) lay patrons gave their churches. Commendatio ecclesiae. Benefice. None antiently received the character of orders, but when also the ordination was for the title of some church. Thence came the later use of episcopal institution. Whence some patrons came to have most part of the tythes. Canonica portio. The clergy and councils against

investitures. Their continuance till towards M.CC. when institution, as it is at this day, upon presentation grew common. How appropriations were in those times made. The antient episcopal right to tythes, especially in Germany, and the northern parts. How monks justified their possession of tythes and parish churches. The right of tythes generally denied in Turingia, to the archbishop of Mentz.

- IV. Of Infeodations of tythes into lay hands, both from the clergy and laity; and of their original.
- V. Of exemptions granted by the pope. Templars and Hospitalers accounted no part of the clergy.
- VI. The general opinion was, that they are due jure divino. But this, indifferently thought on, seems to have denoted rather ecclesiastick or positive law, by the doctrine and practice of the clergy, than divine moral law.
- VII. Laws imperial, and canons synodal and pontifical, for the payment of tenths. The gross error of some that mistake nona and decima in the capitularies. The first general council that mentions tythes.

THE practice found in the time betwixt about D.CCC. and M.CC. from *Christ*, consists in some ordinary payments of tythes, as in the former ages; in more frequent consecrations of a perpetual right of them alone to any church, or monastery, at the owner's choice; in appropriations of them with the churches in which they were by custom or consecration established; in infeodations of them into lay hands; and in exemptions for discharge of payment. By the more general opinion of the church, they are expressed to be due *jure divino*; but that is warily to be interpreted out of the general practice clearly allowed by the clergy. From the beginning of this time canons are very frequent for the right of them. But the first law that may at all be stiled general for it, was ordained by *Charles* the great, and received, but little practised, through the empire. Of all these in their order.

I. NOT only from devotion, but through ecclesiastick censure also, aided with secular power, about the very beginning of this cccc. years, many churches in the western empire, had the tenth paid as a duty. This may be collected out of an epistle written by *Aleuin* to *Charles* the great, touching the exaction of tythes, (which he calls *jugum decimarum* and *plena per singulas domus exaltio*) of the *Huns* and *Saxons*; who being then lately, by *Charles*, conquered, had newly received the

ⁿ Concil. a. Bracarenf. esp. 6. & vide Toletanum. 9. esp. 1.

ⁿ Concil. Aurelianenf. 1. esp. 13.

christian faith. *Alcui* there advises, that it were better for the christian cause, to omit it amongst them, till they were grown firmer, and speaks of it as a thing of known use among other settled christians. His words are: *Vestra sanctissima pietas sapienti consilio praevideat, si melius sit rudibus populis in principio fidei jugum imponere decimarum, ut plena fiat per singulas domus exactio illarum, an apostoli quoque ab ipso Deo Christo edocli & ad praedicandum mundo missi, exactiores decimarum exegissent, vel alicui demandassent dari, considerandum est. Scimus quia decimatio substantiae nostrae valde bona est. Sed melius est illam amittere quam fidem perdere. Nos vero in fide catholica nati, nutriti, & edocli, vix consentimus substantiam nostram pleniter decimari? Quanto magis tenera fides, & infantilis animus, & avara mens illarum largitati non consentit?* This epistle was written about dcc.xcvi, as the historical part of it persuades; and the general laws, by which that exaction might have been made, are among those which about dcc.lxxx. the same *Charles* had ordained in an assembly of estates, of which more in the last paragraph of this chapter. But the execution of those laws soon afterward, as anon shall be declared, failing; this practice of payment also became to be of rare use; and although divers synods soon followed which commanded a tenth, as what was due of itself to the church (whence also in some places a parochial payment doubtless continued, and by prescription and custom established a civil right in some churches) yet * the laity (not much subjecting themselves to any church-laws of the time, that touched their possessions) frequently exercised their arbitrary dispositions, especially of such of them as were not already consecrated, or by custom or prescription settled, and therein pretended them due only but as their own choice, either by consecration to any church or monastery whatsoever, or by infeodation into lay-hands, should determine. And those also which were established by former consecration, custom, or prescription, were very often arbitrarily disposed of also by lay-patrons in their appropriations.

II. FOR arbitrary consecrations; the ^p laws ordained in the first of these cccc. years, that speak of *decimationum proventus priori ecclesiae legitime assignatus, et locus ubi decimae fuerant antiquitus consecratae, et decimae quae singulis dantur ecclesiis*, and such more, point at the use of them. And although, out of any continuance alone of voluntary payment, a kind of parochial right (which also by the laws ^q of the time every rector should have enjoyed in the territory where he dispensed the sacraments) were created; yet consecrations of tythes, not yet established by a civil title, made to the church of another parish at the lay-owner's choice, were practised and continued in force;

as may plainly be collected out of an old law about the beginning of these years made (but not put in execution) for punishment of such consecrations by compulsion of the party to restore to the church the quantity of the tythe so alienated. *Quicunque, are the words of it, decimam abstrahit de ecclesia ad quam per justitiam dari debet, & eam praesumptuose, vel propter unum aut amicitiam vel aliam quamlibet occasionem, ad aliam ecclesiam dederit, a comite vel a missis nostris distringatur, vel ejusdem decimae quantitatem cum sua lege restituat.* So another was made against parsons, under pain of deprivation, that they ^t should not persuade parishioners to come to their churches, *& suas decimas sibi dare.* With it agrees the complaint made about the same time in the council of *Parva*, against such as used to give away their tythes *aliis ecclesiis pro libitu.* And many express examples are of such grants made, not otherwise than as of rent-charges arbitrarily created, some shall be here added. But, because since the last chapter printed, the chartulary of the church of *Utrecht* among many other select monuments to the purpose of this discourse (through the favour of that right worthy and learned Sir *Robert Cotton*, my most honoured friend) came to my hands, wherein an observable consecration of tythes in the former cccc years, is preserved; it shall here, not much out of it's place, be first remembered. There, in confirmations to that bishopric made by *Pipin*, *Charles* the great, and other of the succeeding emperors, is expressed that some near ancestors of that *Charles*, as the elder *Pipin*, *Charles Martell*, *Caroloman*, had given great endowments to it, and among them, * *omnem decimam de mancipiis, terris, & teloneis, vel de negotio, vel de omni re, undecunque ad partem regiam fisci teloneum exigere aut accipere videbatur.* It seems it must be restrained to what the granters possessed in the territory about *Utrecht*, although no such thing appears in the divers charters there remaining of it. For the following times; in the same chartulary, is a commemoration of the possessions of the bishopric, wherein divers particular tithes possessed by special grant are reckoned; as tenths of wreck, of treasure trove, of fishing, and a relation is of promise made to the bishop by one *Gutha* to endow a church, which he gave to *Utrecht*, with the tythes of divers manors. In *Bevorhem*, the words are, *tradidit Gutha ecclesiam necdum consecratam in jus & dominium sancti Martini* (to that saint was the church of *Utrecht* consecrated) *ea videlicet ratione, ut, post consecrationem ejusdem ecclesiae, decimae darentur ad supranominatam ecclesiam de villis hiis nominibus vocatis, Bevorhem, Giffleshem, Heggighem, Schupildhem.* And in the year dccclii *Raginer* duke of *Lorraine*, for the health of his soul, and the souls of his wife, children, and parents, gives to the abbey of

* *Aliter ecclesiastici, quod vide prox. §.*

246. *Benedictus Levita lib. 1. c. 46.*

^q *Leo IV. in c. 16. q. 1. de monachis c. 45. & c. 56. & saepe in capitularibus.*

^t *Leg. Longobard. lib. 3. tit. 3. cap. 7. Hlotharii imp. & in addit. 4. ad capitular. esp. 73.*

^u *Synod. Trident. c. 16. q. 1. c. in sacris canonibus, 56.*

^v *Udelfr. ante alia, diploma ibid. dat. a Lodovici I. imperatoris in quo, quae superiores concelebrant, recensentur.*

^p *Concil. Mog. 16. q. v. c. 42. Metens. circa ann. 890. esp. 2. Mog. circa ann. 846. Benedictus Levita lib. 1. c. 46.*

^q *Leo IV. in c. 16. q. 1. de monachis c. 45. & c. 56. & saepe in capitularibus.*

^t *Leg. Longobard. lib. 3. tit. 3. cap. 7. Hlotharii imp. & in addit. 4. ad capitular. esp. 73.*

^u *Synod. Trident. c. 16. q. 1. c. in sacris canonibus, 56.*

^v *Udelfr. ante alia, diploma ibid. dat. a Lodovici I. imperatoris*

Vito in Verdun, a whole town called *Longuion*, with the appurtenances, and all the tythes of the land that he had within the bounds and precinct of the same town. *Villam nostram*, as the charter speaks, quae dicitur Longuion, cum omnibus appendiciis suis ac decimis quas in banno distae villae habebamus. And one of his successors, *Rigimir*, by charter dated DCCCXLVI. for like consideration, gave to another monastery, seated upon *Moselle*, all the tythes within the liberty of the town where it stood, in these words, *imperpetuum omnes decimas quas habeo in banno praefati oppidi tam in blado, quam in vino, ac aliis rebus*; Where *bannus* or *bannum* is used for the continent within the utmost precinct of the town; in which sense *banleuca*, as also *leuga circumjacens*, occurs in the monuments of this kingdom; as *banleuca de Arundel*, for all comprehended within the limits of land adjoining, and so belonging to the castle or town, which are both as one to this purpose. So the monks of *Clugny* in *Burgundy*, founded by *William* count of *Auvergne* in the year MCCCX, had tythes of divers possessions given them; which the phrase of the time styled *decimas in-dominicatas*, in a charter to them made by *Lewis* the fourth of *France*, in the year 939. And those tythes were often confirmed to them by pontifical authority; as by *Agapetus* the second,^a *Lucius* the second, and afterward by *Urban* the third, in the year M.C.LXXXV. In whose bull, a recital and confirmation also is of an instrument of *Adhemar* bishop of *Xantoigne* made to this monastery, that hath these words in it: *Damus & concedimus vobis decimas quas a laicis acquisitis vel acquirere poteritis*, with a command that laymen in the precinct of their abbey, should not convey their tythes to any other churches. And when the abbey of *Vendome* was founded about the year M.L. by *Godfrey Martell* earl of *Anjou*, the tythes of the salt-pits in some part of *Poitou*, were consecrated to it. The like had the same monastery in some salt-pits possessed by the bishop of *Xantoigne*; which although it had enjoyed for three score years, yet the bishop began to deny any more payment; and for his own gain, would have maintained this opinion, *that no church-lands were to pay tythes to any church*. But *Godfrey* abbot of *Vendome* about the year M.C.XX. sharply corrects him in an epistle, and shews that the opinion of all *France* and *Italy*, then was, that although lands charged to any church with the payment of tythes, were possessed by another church or monastery; yet the tythes were still payable parochially from the one church to the other. That abbot's words are observable, because also they shew a general practice of payment parochially by churches to churches. *Nobis dictum est, scilicet he, quia dicitis, quod ecclesia non debet decimam dare. Hoc*

verum est, ubi ecclesia nihil habet in parocchia alterius ecclesiae, ubi vero ecclesia, in alterius ecclesiae parocchia, possessionem aliquam habet, vel quippiam quod decimari debeat, ibi ecclesia ecclesiae decimam reddere debet, si illud iuste possidere desiderat. Hoc tenet Italia, hoc tenet Gallia; ibi enim novimus ecclesias ecclesiis decimas reddere, & majores minoribus, & minores majoribus, ubi altera earum possessionem obtinet in jure alterius, hoc facimus ecclesiis, hoc ecclesiae fecerunt nobis. And according to this had he a decree for the monastery from pope *Calixtus* the second. This, by the way here, for payment among the clergy. But for more arbitrary consecrations by laymen; In the year M.C.XXIV. *Anselmus de Garlanda*, in his foundation of the abbey of *S. Mary* of *Gornay* in *France*, among other possessions gives it *decimam de Berchorellis, et duas partes decimae de Bercheriis, et totam decimam de Ponteuze, et apud Terriacum medietatem decimae*. Many like examples might be added, but one more only shall suffice, in which the frequency of the practice may be easily guessed at, that is found in a bull, of confirmation, made by pope *Innocent* the third, of the possessions of the abbey of the *Holy Cross*, and *S. Leufrid*, in the diocese of *Roan*; among which divers appropriated churches are with their tythes (and so expressed; *ecclesiae N. cum decimis*) but besides them also many tythes severally granted by divers barons and gentlemen to the abbey, out of such or such lands, without any churches, are confirmed, as *Decimam de feudo Hugonis de Senesi apud Neufvillam. Decimam Willielmi de Mandis apud Ludervillam, de feudo Willielmi Pelet apud Amercort. Decimam de feudo Matthaei de Gamichis apud Manevillam. Duas partes decimarum de feudo Pagani de S. Luciano, & de feudo Orsellii, & de feudo Floaldi, et decimam de Hendervilla, & de Sessevilla in feudo Autulii. Decimam de Beolio in feudo Roberti filii Willielmi. Decimam de Mesvillia in feudo Hugonis de Lace; & decimam de Ruifon in feudo Hugonis Bigor, &c.* If one abbey had so many arbitrary consecrations, who can doubt of the most common use of them? But if you desire more examples, look in the places noted in the margin, but especially where anon we have the practice of our own nation by itself declared. Out of them all (being but few in regard of what questionless might be had in the records of churches and monasteries, yet remaining in other states) you may find a use of that arbitrary disposition till about the year M.CC, when the distribution of tenths also to the poor, according to the owner's free will, (which I take to be consecrations, or grants to monasteries; for the monks were usually called *pauperes*, and were so indeed by their vow) was expressly complained against, as a great fault of the time by

^a Diplomata. 27. & 35. in stemmate Lotharingiae apud Francisc. de Rothes.

47 Hen. III. rot. 44.

^b Biblioth. Cluniacens. pag. 366.

^c Ex tabular. monasterii apud Jacob. Sirmundum in G. Vindocinens. pag. 66.

^d lib. 3. epist. 41.

^e Ita etiam Petrus Cluniac. lib. 1. epist. 33. & 36.

^f In diplomate Ludovici Crati apud Andream Quercetian. in notis ad Petrum Abelandum, pag. 1274.

^g Innocent. III. epist. decretal. lib. 2. pag. 437. edit. Coloniensis.

^h Vide, si placeat, chartam Gualteri vicecomitis monasterio S. Dionisii datam apud Andr. Quercetian. in notis ad beati Cluniac. pag. 14.

ⁱ chartam W. comitis Nivern. apud eundem pag. 174. Adelardi Castiguerii dom. apud Jac. Sirmundum in notis ad beati Cluniac. pag. 95.

^j Gouffredi Balluini apud Aubert. Miraeum in lib. de canonicis collegiis c. 91. Innoc. III. epist. decretal. lib. 1. pag. 160.

^k Cap. 11.

^l In placit. de jurat. & assis. apud Ciceron.

^m A. D. 1144.

ⁿ Biblioth. Cluniac.

^o Gouffr. Vindocinens.

^p In diplomate Ludovici Crati apud Andream

^q Quercetian. in notis ad Petrum Abelandum, pag. 1274.

^r Innocent. III. epist. decretal. lib. 2. pag. 437. edit. Coloniensis.

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^u Gouffredi Balluini apud Aubert. Miraeum in lib. de canonicis collegiis c. 91. Innoc. III. epist. decretal. lib. 1. pag. 160.

^v Cap. 11.

pope Innocent the third : For he then preaching of *zachee's* charity, that consisted as well in making restitution of what was due to others, as in erogation of alms to the poor, observes that he gave of his own, and paid what was o-ther mens. *Dedit proprium & reddidit alienum.* Graviter ergo peccant, says he, *qui decimas & primitias non reddunt sacerdotibus, sed eas pro voluntate sua distribuunt indigentibus.* But as great a fault as it was, it was a common one ; and being committed by the laity was usually allowed in fact by the pope and the ordinaries ; whatever they thought of it in right. And of such authority was this use, that an opinion was bred from it among very great men of the clergy, that, as arbitrary consecration was a cause of the right of tythes in a church whereto they were conveyed, so continual payment of many years (which being by divers, of the more devout, faithfully performed, those clergymen took as equivalent to a personal consecration of the tenths of their increase, where-ever it were received) had so settled the perpetual right of the tythes of any family, that whither soever it transplanted it self, it must still send its tenths to the place where before it paid them ; as if this continual payment had for ever so bound it, that it might not pay them otherwise. This was the opinion of divers bishops in the patriarchat of *Grado*, as you may see by the same pope Innocent his ¹ reprehension of them, and ^m of others elsewhere also. Neither were these grants always free consecrations, but oft-times were made for valuable consideration given by the church, which is expressed in the phrase ⁿ *redimere decimas*, used in the synodal and imperial laws, of this time, made *de decimis quas populus dare non vult nisi quolibet modo, or munere ab eo redimantur.* For, howsoever *Hincmar* bishop of *Rheims*, in reprehending ^o the monks of *S. Denis*, because they were about to take money of a parson for a right of tythe, advised them with *abste ut laici audiant, quod nemo etiam peccatis publicis implicatus in mea parochia facere audeat.* As if it had been almost unheard of in that age (he lived about 1000. lxx) that any man had ever took money for a grant of his tythes, yet plainly the authority of those laws shew, it was no such rarity. Nor was it out of practice about the end of this 1000. years, as may be collected out of a question disputed in ^p *Alexander Hales* touching tythes held by laymen, in territorio alterius ecclesiae quae non potest eas redimere. Although perhaps his meaning was only of feudal tythes. But neither did the laity thus only ^q dispose tythes not already consecrated, but in some kind also, by appropriations, such as were before established to parochial churches.

III. In declaration of the course of appropriations, it is first necessary, to know so much of the nature of parish churches in those times, as without which the appropriations then used, cannot be understood. Briefly therefore, for parish churches ; it is plain that as metropolitick sees, patriarchats, exarchats also in the eastern church, and bishopricks, those greater dignities, were most usually at first ordained and limited ^r according to the distinction of seats of government, and inferior cities, that had been assigned to the substitutes or *vicarii* of the *praefecti-praetorio*, or vice-roys of the east and west empire ; so were parishes appointed and divided to several ministers within the ecclesiastick rule of those dignities, according to the conveniences of country towns and villages ; one or more or less (of such as being but ^s small territories might not by the canons, be bishopricks) to a parish : The word *parochia* or *parish* at first denoting a whole bishoprick, which is but as a great parish, and signifying no otherwise than diocese, but afterward being confined to what our common language restrains it. The curates of those parishes were such as the bishop appointed under him to have care of souls in them, and those are they, which the old Greek councils ^t call *πρεσβυτεροι κληρικοι* or *ἐν τοῖς χωρίοις* or *ἐν ταῖς κληρικαῖς πρεσβυτεροι*, that is, *parochiani*, within the bishoprick. Neither were the *chorepiscopi* much different from them. These had their parishes assigned them, and in the churches where they kept their cure, the offerings of devout christians were received, and disposed of in maintenance of the clergy and relief of distressed christians, by ^u the *oeconomi*, deacons, or other officers thereto appointed under the bishop. Neither had those parochial priests at first such a particular interest in the profits received in oblations as of later time. All that was received wheresoever in the bishoprick, was as a common treasury to be so ^v dispensed. One part was allowed to the maintenance of the ministry, out of which every parochial minister had his salary, according to the monthly pay spoken of in the first 1000. years, another to the relief of the poor, sick and strangers, a third to the reparation of churches, and a fourth to the bishop. So it appears by the ancient ^w canons, if we may at least herein, conjecture of the use of the time, by what they have ordained. And it is like enough to have been no otherwise, so long as these parochial functions were so personal that they were not as now, so annexed to foundations and endowments, but rather exercised as by messengers, sent from the bishops, who had no such reference to lay-patrons, as they that afterward came in upon investiture or presentment have had, but

¹ In ferm. 3. de dedicatione templi pag. 23. tom. 1. nec vigorem ejusmodi donationes oblatores sanctis illis, extr. tit. de dec. c. 7. cym apostolica. ² Decretal. epist. lib. 1. pag. 57. ³ Extr. de paroch. cap. 1. signifi. tant. ⁴ Benedict. Levita capitular. lib. 1. cap. 46. conc. Mogunt. c. 16. q. 7. c. 7. leges Longobard. lib. 1. tit. 3. cap. 2. ⁵ Apud Flodoardum in hist. ecclesiae Rhe-
mensis, lib. 3. cap. 25. ⁶ Summae part. 1. quaest. 11. memb. 6. art. 2. ⁷ Vide etiam quae in proxima sectione de Da-
cia, Turingis, aliis inter asseruntur. ⁸ Videtur Anaclet. & Steph. PP. in epist. decret. Hincmar. Rheimens. in opus. 11. cap. 35.
& consulas imprimis Josephum Scaligerum in notitia Galliae, & in epistolis pag. 147. editione Francfortana, & Ph. Bertrii, Diatribas in
Pisbonum. ⁹ Concil. Sardic. cap. 6. ¹⁰ Neocaesar. cap. 18. & vide Antiochen. cap. 87. & 89. ¹¹ Lep. Alesan.
cap. 13. ¹² Vide concil. Gangr. can. 67 & Chalced. can. 304. ¹³ Vide concil. Antioch. c. 103 & 114. & Urban. c. 11.
q. 2. c. 26. ¹⁴ Synod. Rom. sub PP. cap. 1. & Gelasii decret. cap. 27. a quo hic divisionis modus in usu erat versutioribus illi-
uice aevi christianis, quod innuit Walafridus Strabo, qui floruit A. D. 840. lib. de reb. ecclesiasticis. cap. 27. vide Grat. c. 12. q. 2. c. 26. &
seqq.

only were protected by some appointed by the state for ἰδύουσι, or *defensores* of the church, as they called them, the name of *defensores* being in the primitive time, for this and other purposes, given to such protectors, ἔπος αἰ ἀπαλλὰξ-
 ἔσας καὶ καὶ τοὺς ἀδικησάντας, in regard of their assistance and help to such as suffered injury, as Justinian's words are. And in the first ordination of this hierarchy of bishops and parochial priests, it seems, in some lands wherewith the bishoprick was endowed, the churches were erected, in which the bishop had a kind of right of advowson; who, taking on him the general care of his diocese, ordained incumbents in every of them, and the oblations there received were of the churches common treasure, and so to be divided and disposed of quadrartely. But that quadrartite division was chiefly in the diocese of Rome. For by some^b canons of the French, Spanish, and some other churches, it was tripartite, and had other differences. But all this in the primitive times; and from the first establishing of christianity by a disposition of the hierarchy, till about n. years from Christ, it seems, it continued. And such kind of parishes only were those spoken of in that epistle of pope Denis the I. about ccl.x. if at least that epistle be not a fiction: if it be, then our canonists do ill to use it at all; if not, then plainly they abuse it, where they pretend in it an original of such kind of parishes as since for the most part have had their beginning from lay foundations. But not long after such time as laymen began to build and endow parish oratories or churches in their lordships, and in their place or invest chaplains (ordained, that is, made priests by the bishop, but not instituted by presentation as at this day) that might receive the offerings of such as repaired thither for holy service; that former kind, of making a common treasury in every diocese, was discontinued, and the chaplain or incumbent, acknowledging the lord, of his churches territory, for patron (not much otherwise than, as in the antienter course, every parochial priest did the bishop that collated to him) received now the profits that rose out of christian devotion, to a particular use of his own church; the canons nevertheless saving the fourth part to the bishop. For, that episcopal right grew afterward to be so established by the received^d canon law, that till this day, where prescription of x. years excludes not, the fourth part of all oblations and tythes are, by it, due to the bishop; and some^e canonists make it as a duty succeeding in lieu or proportion to the tenth of the tenth that was payed by the Levites to their priests. But however the canons were (in which also it had been often constituted, that every church,^f and the profits thereof, should be subject to the bishops disposition, as to the only immediate superior; and in some^g that the founder should be utterly excluded from all inte-

rest) yet divers lay patrons in those elder times had, or at least challenged, in the oblations received from christian devotion in their churches, an interest somewhat like to what more antiently the bishop had in the offerings made at the churches wherein he only placed the ministers. Whence the erecting of churches became, amongst some, to be rather gainful than devout. For the patron would arbitrarily divide to the incumbent, and take the rest to his own use. This is manifested in the II. council of Bracara, held about D.LXX. where a canon forbids the consecration of churches built not *pro sanctorum patrocinio*, but *sub tributaria conditione*, as the use was of some places; that is, to the end that the lay founder might have half or other part of the oblations. *Si quis*, are the words, *basilicam non pro devotione fidei sed pro quaestu cupiditatis aedificat, ut quicquid ibi de oblatione populi colligitur, medium cum clericis dividat, eo quod basilicam in terra sua quaesius causa condiderit, quod in aliquibus locis usque modo dicitur fieri, hoc ergo de cetero, &c.* And such a practice is titled a custom of the antient times in an epistle^h attributed to pope Damasus. And in the IX. council of Toledo about the year, D.C.LX. lay patrons are forbidden to use *juris proprii potestatem* in church goods or lands, as if great pretence in those times had been of their right in disposition of them. And, in the imperial capitularies of about the year DCCC. divers times provision is made against such laymen as thought it had been their right only to dispose of the endowments and offerings of such churches as they were patrons of, and that the bishop should be wholly excluded. But it fell at length, that, without much difficulty, the church, what through constitutions, what by their doctrine, had remedy for this usurpation upon the offerings solemnly consecrated to the priests at the altar. And in the following times it had been obtained from, as the plainest part of sacrilege. Yet nevertheless, another interest, that is, the interest of patronage, and a right of disposition of the temporal endowments, which the lay founders first challenged in their new erected churches, which was a right of collation or investiture, whereby the incumbent might receive full possession without aid of bishop or other churchman, could not so easily be gotten from them, although someⁱ imperials were provided against it. For although no layman could, of himself, make any building to be a church, without the bishop's consecration of it, as even among the *Gentiles*, it was carefully foreseen, that in all new temples^j one of the priests solemnly holding a pillar of it in his hand, should make the dedication, yet it being consecrated and endowed, the lay patron, in these antient times, took upon him not only the *advocationem*, or *advowson*, that is, the defence or patronage of the incumbents title; as *officium ad-*

^a Vide, si placet, Theodor. Balsamon. in *Metaphrasi* pag. 454. post con. Carth. c. 27. Justinian. novell. 15. & capitular. Karol. & Ludovic. lib. 4. cap. 31. & lib. 7. cap. 307.
^b Concil. Aurel. 1. cap. 13. Toletan. 9. cap. 6. Bracar. 2. ca. 2. & vide Antegil. capitular. lib. 1. c. 87. & addit. ad capitular. 4. cap. 37. & c. 9. q. 3. c. 2. & seq.
^c Extr. de offic. jud. cap. 10. consequenter, & de praescript. c. 4. de quarta.
^d Extr. de offic. jud. cap. 7. polum.
^e Dile. cap. 26. pite mentis.
^f Cicero in orat. pro domo sua
^g In c. 10. q. 2. c. 15.
^h Capitular. Karoli & Ludovic.
ⁱ Dile. 1.
^j Dile. 1.

vocationis is used in the¹ imperials, but also the collation by investiture without presentation at every vacancy. And the right of advowson, whereto the other of investiture in those times was annexed, in some places the bishop confirmed to him by putting a robe or such like on him at the dedication; as the example^m is of Ulric bishop of *Auspourg*, in one of his dedications, about 1000. L. where *consecratione peracta*, as the author says, *doteque contradita comprobato illic presbytero, altaris procuratorem commendavit, & ecclesie advocacionem firmiter legitimo bacendi, panuo imposto, commendavit*. From this right of collation and investiture reserved by lay patrons, the practice came to be that parish churches and all the temporalities annexed to them, as the glebe and tythes, and what else in succeeding times became to be endowments, were, at every vacancy, conferred by the patrons to their new incumbents, by some ceremony, not differing from our livery of seisin (which is nothing but investiture; for investitureⁿ is only the immediate giving of seisin or possession) with these words, *accipe ecclesiam*, or the like. Neither upon presentation did the bishop institute, as of later time the use had been. And whereas, at this day, nothing passes out of the patron, or vests in the incumbent, in point of interest, the presentation being only as a nomination, and the interest and possession being immediately had from the acts of the bishop and archdeacon, it was far otherwise in these elder times. For the incumbent as really, as fully, and as immediately received the body of his church, his glebe, and what tythes were joined with it, in point of interest from the patron's hand, as a lessee for life receives his lands by the lessor's livery. Whence by the phrase of the time that kind of giving a church was stiled *commendatio ecclesie*, that is, the lay patrons committing or livery of the church, and the endowments to the incumbent to take care of and dispose as a usufructuary of what the patron was proprietary, or as a tenant of that whereof he was in the reversion; And in such sense is *commendo* used, joyined often with *trado*, in *Tully*, as, *commendo ac trado*. And hence came the *commenda*, wherein not the title, but possession, profits, and custody of the church is committed. And the difference is obvious between *ecclesia titulata & commendata*; *commendata* having chief reference to the possessions. And hence was the name of benefice, for a church and endowments so given. For as such lands or annuities, as in the empire, were given for perpetual salaries to military persons, had the name of *beneficia*, so, what was thus conferred upon spiritual soldiers in the church, had afterward the like title. But, at this commendation of the temporalities so made only by the patron, the bishop indeed had the usual consecration of the incumbent, but no-

thing at all to do with the disposition of the church or endowments. For, the law then being that orders could not be given *ἀποχρηστικῶς*,⁴ *sine titulo*, or *absolutely*, but only when a title of a church, or some special ministry was at the same time assigned to the ordained clerk; all orders otherwise given being void, so that at every new investiture a lay patron could not have, as at this day, a clerk always ready made for his church; it was a necessity that for every new investiture, unless a resignation of some other church had preceded, the bishop's ordination or consecration was to be used, which afterward grew to be what now is institution. And although the character of orders were general, inasmuch that, as now also, he that received them was an universal priest, yet, in every ordination, special expression was made of the title of the church (that is, the saint, angel, or martyr, to whose memory the church was dedicated; in words⁵ to this purpose: *Eligimus in ordinem presbyterii, &c. ad titulum S. Mariæ, ad ecclesiam quæ est in pago illo, &c.*) to denote that the end of it was, that the ordained should there exercise his spiritual function, and not leave it during life. For which a law was made also, that such as were to be consecrated or ordained by the bishop, should before they were ordained by the patron in the church (for the investiture or commendation was also an ordination; and by the name of *ordinatus* alle, was he denoted that was so invested) either by oath or caution secure their continuance upon that church only. So you must⁶ understand that in the capitularies, *ut presbyteri qui in titulis consecrantur, secundum canones, antequam ordinentur, promissionem stabilitatis loci illius faciant*; The use then, it seems, being that clerks ordained would at their pleasure resign into the patrons hand (for it is probable, that resignation⁷ in those times, into the patron's hand, without assent of the bishop, like surrender of particular tenants to them in the reversion, was in practice, and divested the title of the church; although at this day, by the canon law, it be grown clearly otherwise) and being then capable, without new ordination of the bishop, of any spiritual function, would take investiture of other churches without consent or knowledge of the bishop; against which also, some laws⁸ were made in the beginning of this 1000. years, but, with the rest, little obeyed. From this use of commendation, or investiture, it came also, that if an advowson had descended in coparcenery, the church had as many incumbents as the parceners had parts. *Singulae partes 7 singulos habebant presbyteros*: Every of them giving an interest in a part, according as they might have done of any other inheritance descended unto them. Nor, as it seems, from other original then this challenged and practised interest, came those *droits honorifiques des seigneurs*

¹ Ulpian. ff. de rei vindicatione l. 12.

² Innocent. epist. 41. & passim

³ Petrus Damian. lib. 1. epist. 13. ad Alexandr. 11.

⁴ Anonym. in vita S. Udalrici cap. 7.

⁵ Benedict. Levit. lib. 1. cap. 33. & addit. 4. c. 37. & synod. Rom. c. 16. q. 7. c. 33. monasterium.

⁶ Concil. Chalced. can. 174 & dist. 70. vid. si placet, extr. de prebend. cap. 16.

⁷ Concil. Roman. de divinis officiis.

⁸ Videis Duarenum de sacris eec. ministeriis lib. 1. cap. 16.

⁹ Vide eundem. lib. 6. cap. 109. & lib. 7. cap. 171.

¹⁰ Vide eundem. lib. 4. cap. 10. & 11.

¹¹ Addit. ad capitul. cap. 25. & concil. Lateran. sub Alex. III. can. 17. & vide append. ad dict. concil. part. 11. cap. 7.

seigneurs es eglises (whereof you may see the treatise lately written by *Matthias Marschal*) and the custom yet remaining in divers places, especially in *France*, whereby the ^a incumbent hath not for himself above a small part of the tythes, at the arbitrary disposition of some spiritual patron, who takes the rest, according to this antiently practised interest of patrons, to his own use. What is so allowed to the incumbent, is styled his *canonica portio*; which was, I think, ^a reserved to him in some grants of the archbishops of *Salzburg* as patrons of their tythes to the abbey of *Riebersperg* in the year M.C.XLIV. Neither let any man out of this, or from other authority in ^b canons, gather, that all tythes were arbitrarily disposed of by the bishop in these middle times; which yet is falsely affirmed by some that rashly think, whatever a canon mentions, because some of the clergy would have had it so, was a practice of the time, but the contrary plainly and frequently appears; Only as in the primitive times, when parishes were not distinguished by limitation of ecclesiastical profits, but only by the ministers function, the bishop alone challenged, and frequently had, all offerings, or *ερασιφροδία*, as appears in those old canons beforementioned, and especially in those of the council ^c of *Gangra*, made against the *Eustathians*; So also after payment of tythes grew into more use in these middle times, he pretended by the canons (as in the examples which we anon have of the *Turingians*, and those of *Holtz*) a right to tythes through the whole diocese, as his parish, where no parochial right was settled in several rectors of parishes. But clearly, in such as were once, according to secular law, made proper to this or that church, he had not, even by the canon law that was in use, more than his fourth, or other part, varied by several customs; and by customs or ^d prescription he lost it. Neither was this practice of investitures, only in bestowing of parish churches. In monasteries and bishopricks the like was, but the increasing power of the clergy took it away wholly in the less churches (saving that in collations of free chapels, prebends, or other benefices, without parochial cure, according to the *droit de regale* of the kings of *England* and *France* especially, in some kind it hath remained) and much altered it in bishopricks and monasteries. It was in substance forbidden in the eighth general ^e council of *Constantinople*; then by decree in the council of *Rome* under *Gregory* the seventh, about M.LXXVIII. in words, which as well shew how the use of investitures at that time remained in many places (for some few years before, it appears, they were very common among the laity, and scarce taxed by the

clergy) as also what opinion the church had of them: *Quoniam investitura ecclesiarum contra statuta sanctorum patrum* (that is, against the many canons made against laymens disposition of church-revenues) *a laicis personis in multis partibus cognovimus fieri, & ex eo plurimas perturbationes in ecclesia imo ruinam sanctae religionis oriri, ex quibus christiana religio conculcatur; decernimus ut nullus clericorum investituram episcopatus, vel abbatiae, vel ecclesiae de manu imperatoris vel regis vel aliquis laicae personae, viri vel foeminae, suscipiat.* And in the general ^b council of *Lateran*, held in M.C.XIX. under *Calixtus* the second, chiefly against investitures, one canon is; *In parochialibus ecclesiis presbyteri per episcopos constituantur, qui eis respondeant de animarum cura, & de iis quae ad episcopum pertinent. Decimas & ecclesias a laicis non suscipiant absque consensu & voluntate episcoporum, & si aliter presumptum fuerit canonica ultioni subjaceant.* The like was in the next general council under *Innocent* the second; and very many other pontifical decrees ^c were to the same purpose. For by this time, through the use of giving of orders without titles of churches (against the old ^d canons) and resignations into lay-hands; every lay-patron easily could have a clerk capable of his benefice, and so invest him, without so much as notice of the bishop. And, notwithstanding those decrees, both oecumenical and pontifical, that practice of investitures could not precisely be taken from the laity, although soon after that general council held under *Innocent* the second, in M.C.XXXIX. it began to be less frequent, and institution upon presentation here and there succeeded it. But not long before that council, it was much complained against by the clergy, and styled by ^e some of them, *haereticis investiturae*: others of them by no means admitting it to be au hereby, but only an usurpation of the rights of the church, which should not be disposed of by lay-hands. Besides other occurrences of investitures in epistles, councils, and story of about M.C. you may see especially the epistles betwixt *Leo* bishop of *Chartres*, and *John* archbishop of *Lions*, with others of *Godfrey* abbot of *Vendosme*, all written about 1130, in which it is largely disputed of; and in them it appears plainly, that although the church would never have permitted it to the laity, and did also sometimes extort renunciations of it, yet the pope often re-granted the right of it in *France* and *Germany* to such as had renounced it. Whence also *Ivo* concluded, that it was but a civil right belonging, by their canons, to the church, and no such thing, as of its own nature, could not be enjoyed, by the laity. But the canons gaining force, as the

^a Vide extr. tit. de praebend. c. 30. extirpandae. & de jure patron. c. 23. praeterea, & lib. 6. tit. de praebendis, cap. 1. suscepi, & le code des decel. decret. 11. lib. 1. tit. 10. ^b Chronic. Riebersperg. pag. 176. & 204. ^c Vide synod. vetust. fol. Joann. IX. A. D. 904. ut omnis decimatio &c. & synod. Augustanum. An. 913. &c.

^d Extr. de praebendis, c. 4. de quarta. ^e Vide concil. Gangr. cap. 7. & 8. & ad eam Zonaram.

^f Vide 19 Ed. III. tit. quare impedit, 60. ^g Vide 1. Verboles de privileg. remi Franciae. priv. 8. & Rebuff. prat. beneficiorum, cap. de reservationibus & Servin. in 3 vol. des playdoies en l'arrest touchant la chapelle S. Nicholas en l'eglise S. Brice de Colchi, diocese de Noyon, p. 209. & vol. 1. pag. 298. & Petr. Gregor. in synagm. juris universi lib. 17. cap. 7. & 8. Falguier. Recherch. liv. 3. c. 31. & 32.

^h Actio 10. cau. 22. A. D. 871. ⁱ Extr. in Romanae editionis, tom. 4. Uti & illud sub Innocent. II. celebratum. Et in Vaticana servatur mus. Jam vero etiam in nupera Bini editione reperitur.

^j Habentur apud Gratianum dist. 63. & c. 16. q. 7. ^k Dist. 70. c. 1. & 2. ^l Vide Gosselin. Vindocinens. lib. 3. epist. 11. & Ivonem Carnot. epist. 235. 236. & 239.

papal power encreased, at length, about the end of this cccc years, it became wholly out of use: for not till then was it left off; And that the course of institutions upon presentations was not before commonly practised, especially in the case of lay-patrons, appears by divers^m canons relating as much, to which I refer you, and more hereof in the *English* use. By reason of these investitures (wherein the glebe, tythes, and all endowments of the church, as well as the church itself, in point of interest or estate, passed from the patron, and at every vacancy were in him as in the only proprietary of them) when appropriations in these ancient times were made, it was not only the church itself, or the *titulus ecclesiae* (for that also, once by consecration created, was given by lay patrons, when the clerk had already his orders) or the patronage, that was directly in point of interest conveyed, but withal the glebe and tythe made parochial by grant, foundation, or custom. And the title of the church (the monastery, according to the patrons provision in many appropriations; and in others, at their pleasure) still gave afterward by presentation of a clerk, whom the bishop instituted. For the clergy, except bishops and such as had episcopal right by privilege, gave^a usually by presentations; these investitures being altogether against their canons, and but like the bishops collations. Neither did any such thing follow upon such presentation as disappropriation, in regard of the endowments or temporalities. For such was the nature of the appropriations, that the church remained notwithstanding presentative, and the incumbent, that came in by presentation, had the church only under the name of vicar, and in another's right, and received the tythes and the profit of the glebe, no otherwise than to the use of the monastery, in which the appropriation had settled them, as investiture should have done in an incumbent. Neither was the title of the church, and the endowments, so entire a thing, but that, according to the patrons interest and will, they might by the law then in practice be so severed. The ordinary instruments of such appropriations plainly shew it. And all the maintenance of the incumbent was at the bounty of the monasteries allowance. And it is expressed usually in old instruments of appropriations, that such a clerk should answer to the bishop *de spiritualibus, vobis autem, to the monastery, de temporalibus*. Which is complained against in that of *John of Salisbury*: *Personatus quosdam introduxerunt, quorum jure ad alium onera, ad alium referuntur emolumenta*. Herewith agrees the general^x council of *Lateran*, held in the year M.C.LXXX. where the ancient course of filling churches, thus appropriated to religious houses, is commanded to be thenceforth better observed. *In ecclesiis suis quae ad eos pleno jure non per-*

tinent, that is, those which they held both exempt from episcopal jurisdiction, and in them had the right of institution and destitution by privilege, *institutos presbyteros episcopis praesentent, ut eis quidem de plebis cura respondeant; ipsi vero de rebus temporalibus rationem exhibeant competentem*. For however by the canonists of later time, this in the council, and in our appropriations, be understood variously, and, for the most part, of churches whereof religious corporations had only the patronage, and according to their law, no property; Whence also they interpret that *rationem competentem* for an account only which the patrons might exact, but not for a denoting of the property or right that the religious houses had in the profits; Yet doubtless in those times, that *suis ecclesiis* in this and the like canons had reference to churches appropriated only, or to such as were possessed by equal right to express appropriation. And although *Innocent* IV. being of the antientest writers on the decretals, rather justifies that more common opinion (whereof you may have most special declaration in our *Linwood*) yet others, and as great lawyers of that time, expressly suppose, that the temporalities are by that passage understood due and payable to the monastery, and that not an account only was to be made of the dispensing of them. Expressly *Hostiensis* upon the difference of their churches held *pleno jure* and not *pleno jure*: *Ubi pleno jure non perinet, tunc habet ibi monasterium temporalia & representationem presbyteri vicarii tantum, &c.* Whereas if it were theirs *pleno jure*, they had also institution and destitution to themselves. And elsewhere likewise he makes the enjoying the temporalities to be denoted by, *pro rebus temporalibus debita subjectione*. And so *Durand*, whom they call^a *Speculator*, in his precedent for the libel, whereby a monastery having founded a church, was to demand the temporalities, thus proposes the suit, *cum ecclesiam illam monasterium a fundatione habuit*, for in those antienter times the right of foundation of a church and appropriation were as² one to religious houses, & *sic per consequentiam in temporalibus sibi debeat respondere, petiti temporalia in ipsa ecclesia sibi adjudicari, &c.* Is it not then plain, that *respondere in temporalibus* denotes the taking of the temporalities to the monasteries use? *Hostiensis* and *Durand* are better authority to prove how the law was antiently taken, than a cart-load of the later and more barbarous. Other reasons might be brought to prove this; but I presume no man will doubt it, that knows how to examine it. I only add this observation, to help clear it, out of a bull of pope *Lucius* II. to the prior and canons of *Kenelworth*, wherein licence³ is given them, to hold their churches in *proprius usus*, that is,

^a Concil. general sub Alex. III. can. 9. & 14. Extr. de jure patron. c. 4. 10. 21. & tit. de instit. c. 3. & tit. de praebendis, c. 31. in

^b Lateranensi. ^c Ad hanc rem, vide c. 16. q. 2. 1. & 6.

^d Ita etiam extr. tit. de privileg. c. 2. 5. in ecclesiis, concil. general. A. D. 1215, cap. 61. extr. de praeb. & dign. c. 31. & Luc. 2. in app. ad concil.

^e Lateran. de A. D. 1180. tit. de jure patronat. cap. 24. & Roger. Hoveden. in annal. fol. 460. b.

^f Vide cum ad tit. de praeb. c. in Lateranensi 31. & tit. de privileg. c. 2. 5. in ecclesiis, editione Venet.

^g Concil. prov. tit. de locaro & conducto. cap. licet bonae verb. assertus non ligari.

^h In summ. tit. de offic. ordinarii, c. sing. autem.

ⁱ Hostiens. sum. tit. de capellis monach. §. quid iuris, & vide tit. de privileg. §. quid operetur.

^j Hostiens. sum. eod. tit. §. quid sit.

^k De magis Curialium, lib. 7. c. 17.

^l Vide cum ad tit. de praeb. c. in Lateranensi 31. & tit. de privileg. c. 2. 5. in ecclesiis, editione Venet.

^m Concil. prov. tit. de locaro & conducto. cap. licet bonae verb. assertus non ligari.

ⁿ In summ. tit. de offic. ordinarii, c. sing. autem.

^o Hostiens. sum. tit. de capellis monach. §. quid iuris, & vide tit. de privileg. §. quid operetur.

^p Hostiens. sum. eod. tit. §. quid sit.

^q Specul. tit. de capellis monach. §. 2.

^r Ml. repetitur in vol. quo compingitur Fridericus poeta in biblioth. Cct onian.

in manu vestra, as the words are, *retinere & earum beneficia ad proprios usus reservare, constitutis ibidem vicariis & diocesano episcopo praeferentis, qui eis de spiritualibus, vobis vero de temporalibus omnibus, videlicet decimis & obventionibus debeant respondere, dum modo vicariis & cæteris ministris earundem ecclesiarum in necessariis providentis, &c.* What can be plainer, than that the phrase of *respondere* in the canons, is here as it were purposely declared, as we have conceived it, according to antiquity? And sometimes also appropriations were made by laymen, ^a reserving to themselves a *ius patronatus*, and *ius praesentandi*. But all the profits of received tythes and glebe were theirs, who so had the appropriations, and were dispensed at their pleasure; and to the curates, in both kinds, as they thought fit, were some salaries given, which turned afterwards oft time into vicarages that belong to such appropriations: whence also it came, that their presentations have been since and are now taken to be only to those vicarages, being made perpetual; whereas indeed, their vicars were originally presented to the whole rectory, but had the benefit no otherwise than is before declared. The words of conveyance in appropriating commonly were, *dedi & confirmavi ecclesiam de N. cum decimis, or cum decimatione, &c.* Whereby the church glebe and tythes passed equally, by way of interest, to the monastery. So antiently, and at this day, many convents, but especially the *Praemonstratenses*, have divers churches continually in their own hands. And some of the monks received into orders, discharged the cure. And in such instruments, of the elder times, as more commonly ordained, that they should keep the church presentative, the church it self passed also it seems as well in right of property, as of patronage; which sometimes also, as is before noted, was excepted to the grantor. Examples enough are extant, wherein all this is apparent. For that more general way of appropriating tythes, the church still remaining presentable, which specially is pertinent hither, you may see the grants and bulls made to the abbey ^b of *Clugny*, to the abbey of ^c *S. Germans in Auxerre*, and many other like recited in pope *Innocent III.* his decretals, as also the charter of *Henry earl of Brabant*, to his abbey of *Afflighem*, near *Brussels*; of *Thierry earl of Holland* ^d to the abbey of *Egmond*; which, being but a few of a multitude, enough shew the use of the time in conveying tythes in appropriations severally, and as distinct from the church; and more are of this nature, where we speak of the *English* use. And although also, confirmations and bulls of popes and bishops are sometimes added to such antient appropriations, as you see in an antient ^e charter, by *Lewis IV.* of *France*, in the year *ccccxxxix.* to the abbey of *Clugny*, where the appropriati-

ons of churches and tythes, *sicut per privilegium Romanum, & per scripta episcoporum adquisierunt*, are confirmed, and in other monuments of succeeding times; yet those were gotten by the monks, to satisfy the canons, not to give validity in secular or common law, then practised. But also some instruments of appropriations are, wherein, from bishops only, tythes of other mens lands were conveyed to monasteries; as in that especially of *Arhelbero*, bishop of *Hamborough*, in the year *mcxli.* whereby ^f he gives to the new minister in *Wipentborp*, then newly founded by *Vicelin*, in the territory of *Holst*, *ejusdem villae decimam cum aliarum quarundam villarum subter positarum decimis, veluti in villa Stavera, Horgan, Brachtenvelde, Tuenthorp, Godeland, Wlmersthorp, Boienbutle, Hasberg, Cumerfeld, Padenworth, Witborp, Padenstede, Bulligstede, sed & alias decimas juxta fluvium Gessere in utroque litoro a villa Elmesborne usque ad lacum Wicstet, &c.* with divers others. And by another charter, dated *mcxli.* he gives to the same monastery other tythes of great value; and some of his successors ^g follow his example. If you question how the bishop came to have power to make these grants, either in regard of parochial curates by the canon law, or of the lay owners interest, according to the practice of the time; know, that in this and most of the bishopricks of *Germany*, especially which began with the christianity of the dioceses, about, or since the beginning of the *French* empire, the right of tythes, through those dioceses, was challenged by the bishops only, and that justly enough by the laws of the empire, which presently are related, because the parishes being not limited, nor indeed christianity so at first settled, that they could have been well assigned to parochial curates, the bishops were the true and immediate parochial and ministering rectors in their bishopricks. And although afterward, parish churches were founded, yet to them they would not resign their antient right in tythes, which from their first function there, they had either enjoyed, or still pretended to, both in regard of the value of them, as also because every founded church was to be otherwise endowed with manse and glebe. Neither had it been altogether safe among so obstinate a people, which could scarce by any means be brought to pay any tenths, to have permitted every parish rector afterward to have demanded them, or taught them due to himself; for to such as had both at once received the doctrine of the faith, and the declaration of the right of tythes due to the ministers (which were only, when they received it, the bishops; if you respect only, as you must, the ministers settled among them) it might have seemed a different doctrine, to have afterward taught them due to any inferior part of the hierarchy; especially in the weaker years of that church. Hence is it, that the archbishop

^a Amadeus comes Sabaudiae in chart. monast. Cluniae. A. D. 1025. dat. extat in biblioth. Cluniae. pag. 419.

Cluniae. p. 1450. 1454.

^b Innocent. III. in epist. rom. s. p. 435. alibi saepe. & vide, si placet, chartam abbati Vercellensi.

^c Apud Andream Quercetan. in notis ad biblioth. Cluniae. pag. 131.

^d & h. idem diploma confirmat.

^e Apud l. Douzain. anal. Hol. lib. 10.

^f Baldwin. arch. Hamburg. A. D. 1174.

^g Apud Auberum Miracum in orig. canon. cap. 41. ubi

^h Biblioth. Cluniae. pag. 165.

ⁱ Biblioth.

^j Apud Auberum Miracum in orig. canon. cap. 41. ubi

^k Biblioth. Cluniae. pag. 165.

^l In app.

of ^h *Mentz* claimed all the tythes in *Turingia*, the bishop of ^l *Lubeck*, of ^k *Salzburg*, and others, the tythes of their dioceses. And hence only those of *Hamborough* so liberally dispose of them. Neither could any of these reasons so well have place in other countries. For, except in *Germany*, and those more northern parts, christianity was in most places of *Europe*, it seems, so established, and the hierarchy of bishops and parochial rectors so settled, before any common doctrine or general law, for payment of tythes, was so divulged, for a thing of necessary observation, in the church, that when it came after to be commanded, it could not be, in any conceit, better ordered, than according to the division of limited parishes. And, those wanting at the time when the faith, and the doctrine and laws of tyties, came first into those parts, how could it (on the other side) fall out, but that they should be taught due only to the bishopricks? Which opinion also, it is no wonder, that those bishops should be willing to preserve and continue, after parishes were there divided, and after tythes came at length to be paid them. For long they preached, and much stir was about it, before they could get a usual payment of them. Neither need you mistrust, that their right to tythes, so clearly pretended in the appropriations by the bishops of *Hamborough*, was only from the episcopal right which the canonists allow, ¹ in case where the lands, wherein the tythes encrease, are not assigned to any one parish church. The contrary thereof appears enough in other conveyances made to the same monastery; in which the same bishop *Athelbero*, first in MEXII. appropriates to it the parish church of *Bisborst* upon *Albis*, *cum banno simul & cum omnibus appendiciis ejus acquisitis vel acquirendis*, and with the largest bounty, that the thing given might carry with it; but afterward, in MCXLVI. he grants to it also a good part of the tythes within the ban and precinct assigned to the same church; which plainly shews, that he granted tythes of lands, already assigned to parishes. For his parish churches and their profits were no other, than what foundations, special endowments, and the offerings of the parishioners, within their ban or limits, had made them. Which is well justified by an old rhimer, that in verse, which would grieve *Apollo's* heart to hear, sings *Athelbero's* liberality to the monastery, and expresses the tythes of fourteen villages, and other places given by him, and then comes to two churches, that he afterward appropriated to it, *Bisborst* and *Ichorst*, and names them only as they had bans or limits and parishioners; as

Bisborst cum bannis, bannos cum parochianis,
Ichorst cum bannis, bannos cum parochianis.

And then adds,

Et Bisborstensis decimatio tota paludis
Additur & quaeque fratrum labor occupat
aeque.

Where you see, he diligently remembers also an exemption given to it by that bishop: which could hardly have been, if the general right of tythes had not been supposed in him. But out of these things you may probably collect, that by this time (that is divers years before the end of these cccc years) in some of those northern churches, tenths were paid more justly, according to the desire of the clergy, than in other places; where you shall find arbitrary consecrations by laymen; continuing till about MCC. For if the bishop had not had these tythes paid, but had pretended only right in them, his bounty to the monastery had been to little purpose. So in the diocese of *Oldenburg*, about MCLX. payment was duly, it seems, made to the bishop by all, saving those which had improved the desarts of *Wagria*, which could by no means be brought to it. *Decimas ex more^m solvere recusaverant*, says, *Krantzius*; being yet ready to give a competent part of their encrease. And although *Gerold* the bishop and count *Adolph* joined together; the one with perswasion (wherein he pretended to them *exempla*, as the same author writes, *ecclesiarum omnium & praesertim proximarum*, and told them of *divinum de decimis preceptum*;) the other with power, to make them tythe their profits; yet they utterly refused, and with tumult and clamours made open profession, *revili conditioni nunquam se colla submissuros, per quam omne Christianorum genus pontificum praesura laboret*. Neither were the *Danes* in those ages easier to be brought to the payment of tythes to the church. Indeed they so much abhorred it, that no greater cause was, why they barbarously betrayed and murdered their king *Knout* ⁿ the fourth, than that he would have imposed it. And about the year MCLXXX. under king *Waldemar* the first, *Abfalon* bishop of *Lunden* would have had them all paid their tythes, and that under pain of an interdict to continue against them: but they stoutly refused, and answered by publick message to the clergy, that notwithstanding the interdict, they should carefully minister divine service and sacraments, or else depart the country: if they did neither, *non solum rerum amissionem sed membrorum etiam truncationem demorarentur*. And it is well noted by *Krantzius*, that the northern nations generally were very hardly brought to pay: but after continual and earnest doctrine of the church, and command of princes, at length many of them yielded; that is, as may be conjectured, in the first half of the year M.CC. Through the frequent use of those arbitrary consecrations, and those appropriations, churches with their tythes and tythes of several possessions, were in exceeding number established in monasteries, as well of nuns as monks. The tythes of LX, of LXXX, or more parishes; were by those courses, annexed sometime to one monastery; which the head and convent possessed, not as any part, or as pretending themselves to be any part of that clergy which made up the evangelical priesthood, or deserved them by ministering

¹ Lambert, Schaffsburg. pag. 437.

² Ezer, de dec. c. 13. quoniam.

³ Wandallae lib. 4. cap. 38. & 39.

⁴ Ad. D. 1011. Krantz. Daniae 4. cap. 37. & in

praeft. ad hille. Norweg. & Dan. lib. 6. cap. 30.

⁵ Vide Greg. VII. regell. lib. 2. epist. 77.

⁶ Ad. D. 1011. Krantz. Daniae 4. cap. 37. & in

divine service and sacraments to the owners. For indeed, divers of these appropriated tythes were out of such lands, as lay so distant from the monasteries, not in other dioceses only, but also in other kingdoms, that the owners never saw or knew the monks, or their cloyster, nor otherwise heard of them, but by their cellars or provosts that exacted payment. Whereupon it was in time of our *Edward* the third affirmed in a petition in ^o parliament, that aliens (which by reason of appropriations made to their houses beyond the seas, or to their priories or cells in this kingdom, or the like) did so devour the salaries due to parish curates, and so neglect the divine service which they should have taken care for in every parish, that they did more hurt to holy church, than all the *Jews* and *Saracens* of the world. Which might have been well applicable to some kind of non-residence of denizens also. But the religious persons justified their consuming this ecclesiastical revenue by reason only of their prayers, their tears, their psalms, their alms, and the like exercises of devotion; besides their maintenance of curates with arbitrary salaries, in the parish-churches appropriated to them. Which is at large seen in an epistle of *Peter* abbot of *Clugny*, to *S. Bernard* abbot of the *Cistercian* order at *Clarevaux*, about the monks of *Clugny* their possessing of a large number of parochial tythes. The *Cistercians* had made divers complaints against them, and one was upon this very point, in these words: *Ecclesiarum & parochialium, primitiarum & decimarum possessiones quae ratio vobis contulit? Cum haec omnia non ad monachos, sed ad clericos, canonica sanctione, pertineant; illis quippe quorum officii est baptizare & praedicare & reliqua quae ad animarum pertinent salutem gerere, haec concessa sunt, ut non sit eis necesse implicari secularibus negotiis; sed quia in ecclesia laborant, in ecclesia vivunt.* Hereto, among divers other imputations, the abbot of *Clugny* answers, and gives his reason for their enjoying of tythes, thus: *Quia monachi ex maxima parte fidelium salutis invigilant, licet sacramenta minime ministrant, assimamus ipsorum primitias, decimas & oblationes, & quaecumque beneficia eos digne posse suscipere, quoniam & reliqua populo christiano a presbyteris* (that is, by the curates which they maintained) *faciunt exhiberi.* And another of great note before this abbot's time, pretends special charity towards the poor, for sufficient reason why monasteries and hermitages had tythes given them: *Ut copiosior, fatis* ^h *he, alimenta proficiant, dantur in monasteriis & eremis decimae quorumque proventus, & non modo pecorum sed & omnium pariter & ovorum.* The same reasons hold in justifying of appropriations to nunneries, where the persons are not capable of the ministry. And among examples of the age, take this one for some confirmation, in these elder times, of the right which monks

pretended to them. In the year *MLIX*, a great controversy¹ fell between *Meginber* abbot of *Herfeldt*, and *Burchard* bishop *Halberstadt*, about tythes of large territories in *Saxony*, appropriated to the abbey. The abbot stood upon the appropriation; the bishop upon his episcopal right, which by the canon law is, and anciently was, the same with parochial, in places not limited to any certain parishes. The bishop's greatness with the judges of both laws, made the abbot so despair of success in the suit, that he prosecuted no further; but withal, summoned the bishop to appear before the almighty in his judgment-seat, within some few days there to answer in the same action; and very soon after departed this life. Not many days interceded, but the bishop, riding towards the court where this suit had depended, to dispatch some proceedings touching it, suddenly fell from his horse very sick; and being carried into his inn, gave most strict charge (as one divinely moved) that the abbey should have restitution and quiet possession of those tythes for ever; and admonished them all, that were by, that whoever had been parties with him in that oppression against the abbey, should by the like judgment from heaven, suffer as he did; confessing to the two bishops of *Magdeburg* and *Hildenesheim*, then visiting him, that he was now called, according to the abbot's summons, to answer his exaction of the appropriated tythes, before the judgment-seat of the almighty; and soon after, he most miserably died; *Uto* his arch-priest, who had been his great instrument in the suit, the same year suddenly following him. But however either the usual practice, or this example wrought; a year or two after, this questioning of tythes upon episcopal right (that is, upon pretence that all tythes of every diocese were due to the bishop, as to the rector of a great parish; for such a right was most specially pretended by bishops in *Germany*, as is already declared, and that both against appropriations and arbitrary consecrations) bred most perillous disturbances of state, and of no small consequence in those parts. For in the year *MLXII*, when *Otho* succeeded his brother *William* in the marquise of *Turingia*, *Sigisfrid* archbishop of *Mentz*, denied him the relieving of his fiefs held of the archbishoprick, unless he would give him all the tenths of his demesnes, and compel all the tenants of his marquise to do the like. This was exceedingly distastful by the *Turingians*, inasmuch, that they openly professed, they would sooner lose their lives, *quam patrum suorum legitima amittere*; that is, than part with their ancestral right of detaining, or disposition of tythes, according to their use, either of infeodations or appropriations; so you must of necessity understand it; and other passages in the author (*Lambert* of *Schaffnaburg*, then living, who relates it) make that sense of it plain. Neither was this *Otho*, for as much as in him lay,

^o Rot. parl. 50 Ed. III. art. 94.

curialium, lib. 7. cap. 21.

Schaffnaburg, in annal. pag. 466. etc. Argemorat.

videtis etiam Francisci Monaldi consilium de jure Abbatis S. Mariae & carceribus in diocesi Patavina apud Joh. Baptist. Caefer. part. 1. consil. 46.

^p Petr. Cluniae. lib. 1. epist. 28. circ. An. D. 1150. Vide, si placeat, Joann. Sarisbur. de augis

^h Petr. Damian. lib. 2. epist. 14.

¹ Oysel, 200, l. c. avium seu gallinarum.

^f Lambert.

wanting to the archbishops request. But in the year MLXVII. upon his death, he left joy enough to his country men, in regard of that his yielding about the tenths, which none of his ancestors had given example of: But in him it was the chief feminary, as the monk says, of the many calamities suffered in the Saxon war of that time. Great disputation of canonists followed some six years after, in a council held, about this episcopal right, in *Erpesfurt*, where not only the tythes of laymen were called ¹ in question, but tythes appropriated to the abbies of *Fulda* and *Hersfeld*, and of all their possessions, were challenged by the archbishop; his canonists vehemently disputing for him; and the emperor *Henry* the fourth, who much invaded the rights of the church, urging him forward, that indeed he might have had a moiety with him. At length, the abbots divided with the bishop by a special transaction; and, when they yielded, the laymen, serving the time, agreed to give him theirs also. But presently the exaction of them ceased. *Hoc anno, MLXXIII, post exortum bellum Saxonicum*, says the monk, *nulla deinceps exaltio facta est decimarum in Turingia; gaudentibus Turingis quod occasione invenissent, ut traditas sibi a patribus leges manu militari tuerentur*. And although the archbishop again questioned it, no success followed. Of appropriations of tythes, hitherto.

IV. THE use of infodations, or conveyances of the perpetual right of tythes into lay hands, is remembered by *Peter Damian*, that complained of it to pope *Alexander* the second, about the year MLX. *Insuper etiam de decimae, facta* ² he, *ac plebes adduntur in beneficium saecularibus*. Where *plebes* is taken for parish churches, as it is often used in the old canons: and they are the same, to this purpose, with parochial tythes and temporalities; although literally, they interpret only *laici*, that is, the lay people of the parish, or those of whom the cure is; which word is often for *plebes* in the Greek canons of the African church. The original of the practice of these infodations of tythes appears not in old monuments. Those which refer them to the time of *Charles Martell*, ³ or any age near him, are in gross error; neither is any mention of them, for the space of about ccc years after him. Lands and monasteries consecrated, were ⁴ about those times of *Martell* often possessed by the laity, and often wrongfully, as the story of him, *Carloman*, and their successors, plentifully discover; and therefore enough in the former chapter. But no tythes in those times were infodated, as also is judiciously observed and taught by the learned *Stephen* ⁵ *Pasquier*, advocate-general *en la chambre des comptes*, whose diligence yet fails, when he confidently delivers, that these infodations

began about the time of the holy wars that were between MXC and MC. The contrary appears plainly, not only in that of *Peter Damian*, who lived long before, but also in the council of *Lateran*, held in MLXXVIII, where this canon is; *Decimas quas in usum pietatis concessas esse canonica auctoritas demonstrat, a laicis possideri apostolica auctoritate prohibemus, siue enim ab episcopis vel regibus, vel quibuslibet personis eas acceperint, nisi ecclesiae reddiderint, sciant se sacrilegii crimen incurere*: Which in the same syllables is iterated in the general council of *Lateran*, held in MCXXXIX, under *Innocent* the second. But in the first you see clearly, that infodations of tythes were antecedent than the holy wars: which is plainly confirmed also by the council of *Clermont*, held in MXXV, by *Urban* the second; where it was forbidden, that laymen should thenceforth *altaria vel ecclesias sibi retinere*, that is keep churches and consecrated tythes in their own hands, for so was the common ⁶ signification of *altaria* at that time in France. And observe therewithal, that they had been practised not alone by laymen, but by bishops also, as is declared in *Peter* ⁷ *Damian's* complaint against them for it. Likewise it seems, religious orders made fields or tenelements of tythes ⁸ for laymen. Testimonies of these infodations are very frequent in the canon law, which commonly styles the tythes so conveyed into lay hands, *decimae laicis in feudum concessae*, and *feudatae*, and *infodatae*, that is, *feudal tythes*, or as the French lawyers call them, *dimises infodées*. And to this day these infodations remain; especially in France and Spain, and also elsewhere. Neither are the tythes so possessed, other than meet lay possessions, and determinable before the secular judge. But thereof, more in the practice of the next cccc. years, in which the ancient infodations have continued. But since the year M. C. LXXX. none could, in France especially, be newly created; that is, no lay man might thenceforth begin infodations of tythes parochially due by the canons. So was it ordained in the general council of *Lateran* then held, in these words: *Prohibemus* ⁹ *ne laici decimas cum animarum suarum periculo detinentes in alios laicos possint aliquo modo transferre. Si quis vero receperit* ¹⁰ *et ecclesiae non reddiderit, christiana sepultura privetur*. So hath the continual practice, which in such a case is the best interpreter, since been in that country, which hath received this canon for a binding law. Neither is it ¹¹ otherwise to be understood; however divers of the later canonists, with ignorance enough, draw it to a different sense, and oppose it against the right of all feudal tythes, being antecedent than the council, and since passed over into lay hands. And whereas they commonly suppose, that all these ancient feudal tythes were at

¹ Vide Schaffnaburg. pag. 479.

² Petr. Damian. lib. 1. epist. 10. & lib. 4. epist. 12.

³ Vide Krantz. metropol. lib. 4.

c. 2. Ubi ad morem Mandrabuli, conjecturas de hac re intermittere avertit.

⁴ Vide, cum his quae supra adnotavimus, Hodoard. lib. 1. Rhemenf. eccles. lib. 3. cap. 12. etiam in ecclesia orientali monasteriis & locis aliis sacris laici saepe uti fructu sunt. consultat in consuetud. Alexi patriarchae Constantinopol. edit. in comment. Zonarae, & in canon. 13. synod. Oecumenicae 7.

⁵ Et les recherches de la France, liv. 3. chap. 15.

⁶ Lib. 4. epist. 12.

⁷ de dec. c. 2. §. 5. Sam.

⁸ Extr. tit. de dec. c. 19. Prohibemus.

⁹ C. 1. §. 3. c. 2. quaelibet.

¹⁰ Neque aliter sane intelligunt ventuiores illi puri interpretes Innocent. IV. Hostiensis. Bernardus. & vide Henricum Boetium ad tit. de dec. c. 2. §. 5. Sam.

first spiritual, and transferred from churchmen, at the request of princes, into lay hands and since wrongfully detained; surely it is an error; neither is there any antient warrant sufficient for it; many of them were doubtless created by laymens grants, as rents-charge, cistovers, turbaries, and the like are. Who can doubt of it, that observes but alone this canon *prohibemus*? Whence also may be strongly inferred, that the greater number of infeodations were through grants made by laymen to laymen, as consecrations were, at their pleasure, made to churches. For what is there only forbidden by the council, may be thought the greatest and most prejudicial practice of the time against the profit of the clergy. Neither is any provision there made against the other kind of infeodations, which pass tythes from churchmen. And although the words *ecclesiae non reddiderit*, in the canon (and in the body of the same council, in *Roger of Hoveden*) seem to suppose, as if it had been made for such tythes as had been taken from the church; yet indeed, the truer reading is *tradiderit*, as appears in the body of that council first fully published out of the *Vatican*, in the last tome of the general councils printed at *Rome* by command of the present pope *Paul* the sixth; wherewith agree other editions, but of less authority. And perhaps also some old infeodations were made by lay patrons in the vacancy of their churches, by the same challenged right as they alone made appropriations. For, as by our common law, the patron and the bishop may in the time of vacancy dispose of the endowments (as by the canon law also, if the chapter's consent, or the pope's, be had) so in those elder times, upon equal reason, when the patron had the only disposition and interest of the church, as is already shewed, he alone sometimes granted any part, at his choice, it seems, to lay or clergymen. Why not any part as well as all? And that patrons granted whole churches into lay hands, appears by divers passages in *Flodoard's Rhemish* history, by that before cited out of *Damian*, and by the general council of *Lateran*, under *Innocent* the second, where it is ordained, that they should be restored from the laymen to the disposition of the bishops. And an example is extant among the records of the monastery of *Edmond in Holland*; wherein *Charles* king of *France* (who is commonly therein taken for *Charles* the bald; but *Douza* thinks it to be rather *Charles* the simple; and made about 1000. and is thereto persuaded by synchronism, the best trial of such truths) recites, that *Hagano*, one of his nobles, humbly requested of him for *Thierry*, the first earl of *Holland*, *quosdam res; ecclesiam videlicet Hecmunde, cum omnibus ad eam jure pertinentibus a loco qui dicitur Zwtherdes Haghe usque ad Fortropa & Kinnem, &c.* Which by patent he grants him in fee, *& ut libere haec omnia teneat atque possideat, habeatque de his potestatem juxta libi-*

tum suum ordinandi seu faciendi. If the church itself of *Edmond* (the parish church; for it was then no abbey, but afterward made one by that *Thierry*) passed not by this patent into lay hands, I sufficiently understand it not; neither is it spoken of, but as what might, according to the use of that time, be clearly made a lay-fee. Through these kind of grants, practised both by lay and clergymen, princes, and private persons, the antient infeodations of tythes had their original, as well as by leases from the church; and not by imposition of tenths by princes, as some^a have ignorantly conjectured; although also it be certain, that princes sometimes joined^b with the bishops to bring in the payment of tythes, that thereby themselves might have beneficial infeodations of them from the church. But as princes made infeodations out of their own demesnes, or their own churches; so other private lay persons. And the clergy, sometimes of tythes already vested in them; and sometimes, it seems, out of their demesnes. And perhaps especially religious persons, exempted from payment by bulls, made some out of their own demesnes, as may be conjectured out of a decree^c of pope *Alexander* the fourth, that speaks particularly of infeodations made *a religiosis exemptis & aliis*. And for examples of tythes already possessed, and thus granted by the church, you may especially see, that of *Engelbert* count of *Goritz*, who had an infeodation^d antiently from the church of *Trieste*, in the patriarchat of *Aquilegia*, and *Henry* count of *Ratzenburg*^e had an infeodation of all the tythes which were paid to the church in his territory, from the bishop of *Oldenbourg*. So one *Hildeward* had one in the diocese^f of *Hamburg*, and surrendered it to *Baldwin* archbishop there, about M.C.LXXIV. But examples of them were^g very many; the dislike wherof was one especial cause, pretended by those of the deserts of *Wagria* in *Holst*, about M.C.LXX, why they would pay no tythes. *Practerea*, says^h *Krantz*, *& hoc adjecterunt, non multum a veritate aberrantes, quod omnes paene decimae in luxu cessant hominum saecularium.* To these testimonies, of laymens arbitrary detaining, disposing, or receiving of tythes in those elder ages, you may addⁱ *Bernardus Morlanensis* (an *English* monk of *Clugny*, about king *Stephen*) his complaint of non-payment to the clergy; thus speaks he in his affected form of verses.

Russicus bordea, mittit in borrea, farra recondit.
Horrea grandia, vasa capacia multaque condit,
Nec pecus aut fata dante Deo data vult decimare,
Nec sacra portio, nec decimatio redditur arae.

^a Ajoud Jan. Douzam. in annal. Holland. lib. 5.

^b 1773. & Krantz lib. 4. Wandalaec. 17.

^c lib. p. 471. Edit. Colonienfis.

^d Edit. de dec. c. 17.

^e Krantz. Wandalaec. lib. 4. cap. 31. & 39.

^f Wandalaec. lib. 4. cap. 31.

^g Videtis Krantz. metropol. lib. 1. c. 2.

^h lib. tit. de dec. c. 1. §. 3. ante.

ⁱ Innocent. III. epist. lib. 2. p. 447. & vide

^a S. Laaffnau. An. D.

^b Innocent. III. epist. lib. 2. p. 447. & vide

^c Append. ad hist. Boem. p. 134.

^d Vide

^e Ms. lib. 2. de contemptu mundi in biblioth. Cotton.

V. T H E like liberty as lay-men had enjoyed (in not subjecting themselves to the payment of tythes, according to the laws of the church, but bestowing or retaining them at their own wills in most places, even from the beginning of christianity, until about the year M CC.) was another way purchased, for some time, by religious houses, so to discharge themselves of censure of the canons, and that by exemptions or papal privilege. For however the laity justified themselves by their secular right, admitting of canons that touched their estates, but as they saw cause in their own judgments; yet religious persons, who were always of the pontifical side, and reckoned in the catalogue of the clergy, and possessed divers large territories, durst not so oppose what was ordained either by decree at Rome, or in synods general or provincial. Therefore when from the beginning of this age, both doctrine and canons (of which more presently) had made the duty of tythes of a known right among the clergy; clergy-men became somewhat strict observers of the payment, as you see plainly in that before cited out of *Godfrey*, abbot of *Vendosme*, with whom *Peter*, abbot of *Clugny* agrees. And, altho' ^a canons be in *Burghard*, *Ivo*, and *Grattan*, referred to, I know not what ancient council of *Chalons* or *Mentz*, whereby lands, occupied by bishops or abbots, seem to be discharged; according to which also, another decree is found in the *Vatican*, annexed to some councils of pope *Urban* the second; yet it seems by the authority of those abbots and other testimony, that they were not practised as church laws. But what some of the clergy durst not do for the canons, they had licence for by exemptions from the pope. And, beside those other canons; from *Paschal* the second, about M C. there was granted to all religious persons, a special discharge from tythes; But it seems also, that this exemption soon took not force in execution, for it was made divers years before those two abbots wrote, and (if I understand them) expressly affirmed the common practice of the contrary. And in an instrument of composition betwixt the *Templars* ^b and *Praemonstratenses*, in the year M CXLII. one special article was, that, *nullus in utroque ordine, alter ab altero, tam de nutrimentis, quam de laboribus decimas exiget vel accipiet*. Whence some inference might be, that no clear exemption preceded (at least in force and practice) for both. But however, afterward, about M C I. most of all the religious orders were ^c exempted, by pontifical privilege, from payment out of possessions kept in their own occupation, which pope *Hadrian* the fourth (about that time) restrained to the *Cistercians*, *Templars*, and *Hospitalers*, and decreed that all other religious orders should pay tythe of whatsoever increase they had in their own occupation, fa-

ving of ^a new improvements by culture, of pasture for their catel, and of garden fruits. But neither were they by these exemptions freed from payment of tythes, which were taught due only by common right to the church. They were discharged also from such as had formerly been ^b consecrated out of their possessions, by their founders or benefactors, to other churches, over which also the pope challenged supreme authority in disposition of their revenues. But the laity would not permit such exemptions to extend to their infeudations. *Milites Galliarum*, says *Peter* of *Blois*, speaking of the *Cistercians*, *sibi jus decimationis usurpant, nec vestris privilegiis deferentes, eas a vobis potenter extorquent*. But, that of those three orders was afterward, in the year M CCXV. in the general council of *Lateran*, limited to such lands as they ^c had before that council purchased; Where observe by the way, that exemptions were then chiefly allowed to two orders, which are not properly to be reckoned amongst any part of the clergy, or ecclesiastical persons. For the *Templars* and *Hospitalers* were devout soldiers only, neither could ^d they justify their enjoying of tythes, either thro' exemption from the pope, or consecrations from the laity, by the reasons which other cloister monks used. Their prayers, or devotions in private, were not the services expected from them in the church, but their swords and valour only gave the desert; as at this day may be truly affirmed of the *Hospitalers*, or knights of *S. John's* of *Jerusalem*, which being now, as in those ancient times they were, only soldiers of the church, have therefore been divers times lately ^e adjudged in the court of *aides* in *Paris*, to be no part of the clergy. But also, by the succeeding popes, other like privileges were granted to ^f bishops, abbots, and at their pleasure. But of the practice of these ^g *cccc* years, thus much.

VI. OF the opinions left in the monuments of the clergy, both touching the right of tythes, and those practices, next briefly. Very frequent are the testimonies in the old councils of about the beginning of these *cccc* years, in which tythes are spoken of as due generally by God's ordinance: As, *decimas Deo dari omnino non negligatur, quas Deus sibi dari constituit, quia timendum est, ut quisque Deo debitum suum abstrahit, ne forte Deus per peccatum suum auferat ei necessaria sua*, which occurs in the provincial council of *Mentz*, held in M C C X I I I, and is iterated in some ^h other succeeding of the same province, and in the ⁱ capitularies. And it is ordinarily grounded upon the *Levitical* laws (which are obviously cited for the right of tythes in the very ^j syllables of *Moses*) but sometimes also on *Abraham's* and *Jacob's* examples, as in *Walafrid Strabo*, that lived about M C C X I.

^a Videlicet c. 16. q. 1. c. 46. & notas editioni Gregorianae adjectas.

teran. part. 13. cap. 16.

^b Chronicon. ord. Praemonstrat. nup. curialium. lib. 7. cap. 21. & append. ad concil. Lateran. part. 13. cap. 3. & 10. & part. 41. cap. 4.

^c de dec. c. 2. Ilaruo. & Innocent. III. tom. 2. p. 410. edit. Colonien.

^d eccles. Galliar. lib. 4. cap. 19.

^e Extr. de dec. c. 14. super abbates.

^f Le Brei advocat en la dicte cour. playdoie 25.

^g app. ad concil. Later. general. part. 13. cap. 2. & seqq.

^h Ut in concil. Mogunt. A. D. 846. & A. D. 847.

ⁱ Vide concil. Aquigran. lib. 11. cap. 11. & seqq. tom. 3. edit. penult. Bin. pag. 116.

^a Extr. sic de dec. c. novum genus, & app. concil. Lateran. part. 13. cap. 16.

^b Extr. de dec. c. 10. ex parte, vice Joann. Sarisburiens. de

^c Petr. Blesiens. epist. 82. apud Boetium. in decret.

^d Videlicet Joann. Sarisbur. de novis curialium

^e Vide Innocent. III. tom. 2. pag. 119. & 430. & 431.

^f Benedic.

^g Ut in concil. Mogunt. A. D. 846. & A. D. 847.

^h Vide concil. Aquigran. lib. 11. cap. 11. & seqq. tom. 3. edit. penult. Bin. pag. 116.

also, the chiefest practice of these cccc. years was herein contrary to the divine law; A strange imputation to lay on the time; if at least divine law there, and *Deus precepit*, and *Deus constituit*, and the like in their other passages for tythes, denoted the divine moral law. But if you so understand it, how could that *lex caritatis*, that *Ivo* speaks of, so dispense with it? And with what colour could the church so frequently practise against it, or pretend arbitrary consecrations to be so meritorious? But for an interpretation of their meanings, by shewing how others conceive that *lex divina* here, look in the next cccc. years. As for exemptions; some complaints were made against them by such as lost by them; as you may see by the monks of *Claugny*, complaining against the *Cistercians*, and by *Peter of Blois*. But out of them also may be collected, that the general opinion of the age was not, that they were due by the divine moral law. Was *Rome*, in those ancient times, so bold to grant so many dispensations expressly against the divine moral law? Yet also *John* bishop of *Chartres*, in those times, found much fault with the exemptions given to religious persons. *Miror*, saith he, *ut fidelium pace loquar, quodnam sit quod decimas & jura aliena usurpare non erubescant. Iniquient forte religioſi sumus. Plane decimas solvere religionis pars est.* And more to this purpose you may find in him, where he tells you, that these exemptions did *derogare constitutioni divinae*. But the clergy generally was much against the use of infodations of tythes and churches into lay hands, although it were practised by some bishops and religious houses; who committed strangely, if they were also of opinion, that the right of tythes was due to the priesthood immediately from the moral law. *Quid est enim*, saith *Peter* ^b *Damian*, *decimas in usum saecularium vertere, nisi mortiferum eis virus, quo pereant, exhibere? Hinc accidit quod & plebejanis iusta detur occasio, ut matricibus suis ecclesiis obedientiam subtrahant, ut non eis legitima decimarum persolvant.* And *Alexander III.* directed the bishop of *Amiens* to ^c decree, that a gift of a tythe by an abbot into a lay hand, was void, *quoniam saecularium de jure haereditario possideri non debet.* But these are only against conveyances of tythes already consecrated to churches, and so hallowed. But, such as were by their first creation infodated to laymen, can no more be accounted, in their own nature, differing from other temporal and lay possessions, than rents charge, coveys, the tenth sheaf, or the like at this day granted in fee by one lay man to another. Neither indeed was the churches right, whatever it were, to her tythes properly diminished by such grants. For, if at this day the owner grant the tenth sheaf of lands tytheable, to a lay man, may not the grant be good, as a charge out of the land?

And yet the church there hath her right as before. But the truth, it seems, was, that in those elder times, lay men that had created a tenth into lay hands, rarely, or not at all, paid any to the church; and those infodations, once made gave them greater pretence of withholding what the church demanded; as if it had been enough to say, they must not, could not, pay two tenths out of their land; and that if a tenth were once created to any man, nothing else might be exacted under the like name. The same may be thought on in consecrations to monasteries. For if tythes had been held generally due and paid parochially, as now, then clearly, although a layman had granted a tenth to another church or monastery, what other favour had been due parochially, had ^d notwithstanding the grant, still remained payable to the parson. How could it have been otherwise? And so no small number of doubly paid tythes had remained at this day.

VII. The laws made in this time for payment of tythes, were imperial, provincial, and pontifical. The first of the imperial, was made by *Charles* the great, in a general assembly of estates, both spiritual and temporal, under him, in the xth year of his reign over *France* and *Germany*, and in the year of our Saviour, dcc.lxxviii. It was there ordained, *ut unusquisque suam decimam donec: atque per jurisdictionem episcopi sui* (or pontificis, as some copies are) *disponatur.* Which law indeed, with divers others, for true payment of tythes, were generally made by him before his empire, which began not till the year dcc. yet because this was in the same terms received into those capitularies collected by *Benedictus Levita*, as from him being emperor, it may well enough be titled imperial, and it is the first to this purpose extant, which can be at all titled general, and was ordained by both powers, secular and spiritual, to any whole state; unless you will believe, that in *Scotland* a law was established by king *Congallus* and his clergy, about d.lxx. after *Christ*, for the general payment of tythes there, according as ^e *Hector Boetius* hath related. *Congallus*, indeed, is by others affirmed to have been very careful for the clergies maintenance. But it will, I think, fall out to be too bold an assertion of that reigning *Hector*, who often, as it were, makes laws for the *Scottish* kings, that he may relate them; or else he was deceived by them from whom he took it. No good authority can justify such particulars of that age there; neither is it to be received otherwise than as fabulous, and proceeding out of that common mistaking of ancient passages of church revenues, and confident, but ignorant, application of them to tythes. But from that law of *Charles* the great was that exaction of tythes, spoken of before by *Alcum*; and thence are tythes, in *Anse-*

^a Per. Cluniac. lib. 1. epist. 33. ad Innocent. II. & Petrus Blef. epist. 82. apud Bechel. eccles. Gall. decret. lib. 6. cap. 19.

^b Lib. 4. epist. 12. vido etiam bullam Urbani III. in biblioth. Cluniac. A. D. 1156.

^c Extr. de dec. c. 15. ad haec. & vide app ad concil. Lateran. part. 4. cap. 1.

^d Vile, 6. placet, 44. Ed. III fol. r. & 44. fol. pl. 25.

^e Constit. Karoli edit. a Vito Amerbachio, cap. 7. leg. Longobard. lib. 3. tit. 3. cap. 1. capitular. lib. 5. cap. 133.

^f Hist. Scotorum, lib. 9. caute de Congallo Buchananus. lib. 5. sacerdotum, inquit, praestitit aliquo praesentibus divitiis. 76. decimis adiecit vir doctissimus non aulicus est.

gifu his collection of his imperials, so frequently mentioned, as of known right; and hence also had the title of the Roman bishops, before spoken of, its original. Those capitularies, both of *Ansegifu* and *Leuita*, were collected by them about the year D.CCC.XL. in both of which, frequent constitutions are for tythes, and for the parochial right also of them. Yet with them also take the constitutions of *Charles* the great, about the same time collected, but published by *Vitus Amerbachius* in the year M.D.XLV. as also others occurring in the collection of *Melchior Goldastus*. These, together with the laws of the *Lombards*, have very many constitutions of about the beginning of these cccc. years for this purpose; and one only shall suffice to be here transcribed. *De decimis^b quas populus dare non vult, nisi quolibet modo ab eo redimantur; ab episcopis prohibendum est ne fiat; & si quis contemtor inventus fuerit, si noster homo fuerit, ad praesentiam nostram venire compellatur, caeteri vero distringantur ut inviti ecclesiae restituant quae voluntarie dare neglexerunt.* This was made either by *Charles*, or *Lewis I.* but it is falsely referred to the emperor *Lothar*, in the laws of the *Lombards*. It was provided, you see, against such as would not give their tythes, unless they were purchased of them for valuable consideration. But the effect that these laws had, was short; the laity soon disobeying such commands as diminished their revenues. And it enough appears in the story of about the year^c D.CCC.XLV. that little or no practice was of any of those laws of the capitularies, in behalf of the clergy; nothing being more frequent, than not only the denying them what they would have had, but also the taking from them what they otherwise possessed. Nor could they have sufficient remedy for it, either in the council of *Meaux*, where, under *Lothar I.* they humbly sought it, or long afterward, as is manifest in the monuments of the succeeding ages. But by the way, whereas some, both strangers, and of our own countrymen, out of the joint mention of *nona* and *decima* in those imperial capitularies of *Charles* and *Lewis I.* fetch an example of a ninth paid to the church as well as a tenth, and bring it as a character of the times devotion; as if the tenth had not then been thought enough, unless a ninth also, like a second tenth, had been offered; it is a ridiculous error, and proceeds from gross ignorance of the common laws, story, councils, and use of that age. The ninth and tenth there spoken of, were only the rent due from the tenants of church lands by the ordinary reservation of the tenth, as of what was held, by many, of itself, due to the clergy, and of the ninth, as of the rent or consideration to be given to them as to lessors for the received profits. So will it plainly appear in a multitude of old^k authori-

ties, to which I refer you. Neither was the ninth here thought due otherwise, than as among the ancient *Bavarians*, the tenth only from occupiers of church lands. The tenth of the profits was all that their laws^l appointed to be paid for rent to the church by lessees. But also very many provincial constitutions were made for the true payment of tythes about the beginning of these cccc. years, as in the council of *Mentz* in the year D.CCC.XIII. *Admonemus atque praecipimus ut decimas Deo omnino dari non negligatur.* Which words were received also into the imperials, and with them agree divers councils, held about the same time; as the council of *Rheims*; the fourth of *Arles*; the second of *Chalons*, and many other following. And in *Scotland* (if we may believe the^m author, for though he speak very good language, yet he is of no such sound credit) about the year DCCC.XI. king *Gregory* in his laws for church liberties ordained that the spiritual court only should have cognizance of tythes; which had been perhaps all one as to have established them to be generally due. For by the opinion of that court, it is likely they would then also have been judged so. And also among the ordinancesⁿ of king *Macbeth* about the year M.X. the same author puts one in these words, *Decimam partem terrae nascentium pastoribus ecclesiarum libere conferto*: Many more of like nature are where we speak severally of the *English* constitutions. For pontifical decrees; publick monuments, I think, have none in express terms of command (except you look back to that^o signed one of pope *Damasus*) antienter than that attributed to^p pope *Nicholas II.* *Praecipimus, says he, ut decimae & primitiae seu oblationes virorum & mortuorum ecclesiis Dei fideliter reddantur a laicis, & ut in dispositione episcoporum sint; quas qui retinuerint a sanctae ecclesiae communione separentur.* The self same words^q are also under the name of his next successor *Alexander II.* That of pope *Leo IV.* about the year DCCC.L. *De decimis. Justo ordine non tantum nobis sed etiam majoribus nostris visum est, plebibus tantum, ubi sacrosancta baptisima dantur, debere dari, may be reckoned for a canon for the right of tythes, if you will.* But it seems rather it was at first a declaration of an opinion than a constitution. But both the other and that, with divers passages also out of *S. Augustine*, *S. Ambrose*, and others, and those old provincial councils, that make for the general right of tythes, were confirmed for general canon law in *Gratian's* *concordia discordantium canonum*, by pope *Eugenius III.* in the year M.C.LI. or presently after; For however some canonists ignorantly otherwise place the collection of that first part of the body of the canon law; it is most plain that it was in that year collected by him; which is best justi-

^a Ansegif. capitular. lib. 1. c. 115, &c.

^b Benedic. Levit. lib. 5. cap. 46.

^c Vide Baronium rom. 10. An. Do. 545.

& 146. Flooard. hist. item. eccles. lib. 3. Johan. PP. VIII. epist. 121. 243. 245. 263. 297.

cap. 2. Levit. lib. 5. cap. 145. Concil. Turon. 3. cap. 46. Meldens. An. Do. 845. cap. 62. Flooard. hist. Rhemens. eccles. lib. 3.

cap. 4. vide & Goldast. consil. imp. rom. 1. p. 232. 648. & quae adiecta sunt c. 16. q. 1. c. 19. edit. Greg.

rom. tit. 1. cap. 14. de colonis & servis ecclesiae. ^m Hector. Boet. hist. Scot. lib. 10. ⁿ Leg. Bavariorum tit. 1. c. 14. ^o Sup. cap. 5. ^p A. D. 1059. in synod. Rom. &c. 16. q. 2. c. 3.

q. 1. c. 45. ^q C. 13. q. 1. c. 16. q. 1. c. 41. & seq. & c. 16. q. 7. passim.

^r Diff. 32. c. 6. praeter. § deinde. ^s C. 16.

fied by a most antient copy of it written before the *paleae* were inserted, and remaining in the *Vatican*, with this ^a inscription: *Decretum Gratiani monachi sancti Feclicis Bononiensis ordinis sancti Benedicti compilatum in dicto monasterio anno Domini millesimo centesimo quinquagesimo primo, tempore Eugenii papae tertii*. Enough other testimony is of it. And in the council of *Clerefont* held in M.XCV, by pope *Urban* the second it was decreed, *ne laici decimam partem de laboribus suis retineant*. Some other passages of popes are about that time against the selling of tythes, which they call *simony*. And in C. 16. q. 7. c. 1. after the passage of *Gregory* the seventh, before cited out of his council of *Rome* against feudal tythes, these words follow, as if he had continued them; *Operetur autem congruentius nos decimas & primitias, quas jure sacerdotum esse sancimus, ab omni populo accipere, &c.* which comprehend in them a constitution. But neither these or any of the rest that follow there, are in that council of *Gregory*, neither find I whence *Gratian* had them. But an epistle ¹ of that *Gregory* is extant, wherein among other admonitions to some princes of *Spain* (after such time as the profession of christianity there, was purged of some *Gothick* corruption, by a ² council held under *Richard* abbot of *Marseilles*, the pope's legate in M.LXXVI, so I understand that reference made, in the epistle, to a kind of new conversion to the faith) he persuades them, *decimas, quae ad usum tam ipsorum quam ecclesiarum & pauperum proficiant, dare, totique regno indicare. Quod quidem nulli debet grave videri, pro meliori parte, videlicet semper viutura anima, quemque decimam Deo offerre, cum pro morituro corpore plurimae gentes conjugibus suis tertiam rerum legibus compellantur exsolvere*. He admonishes, you see, and persuades, but commands not. He thought not, it seems, his own power great enough to have had effect in disposition of a tenth part of every man's revenue, and therefore abstained from command. Neither could he have pretended the authority of any law or canon, generally received into practice; For neither in his time, nor long after, till about M.CC, were tythes so generally paid, as since, without special grant or consecration, as is sufficiently shewed; neither had any general council as yet once remembered the duty, or the name of tenths. The first general council that mentions them, is the ninth, that is, that of *Lateran*, held under *Calixtus* the second, about M.C.XIX, extant in the *Vatican*, and first published in the late edition of the *Greek* general councils printed at *Rome* by authority of the present pope *Paul* the fifth, and now newly inserted into *Binius* his last ³ edition. But they are there spoken of only, as they were received by special consecrations. And in the general council of *Lateran*, held in M.C.XXX, under *Innocent* the second, feudal tythes are in

the same syllables mentioned, as in the decree of *Gregory* the seventh, before cited out of the council of *Rome*. And this also, taken out of the *Vatican*, is to be found only in those two late and fullest editions. But of the general councils, before that edition at *Rome*, ordinarily known and read, the first that names tythes, is the eleventh, that was held under *Alexander* the third, in M.C.LXXX. But there infeodations of them into lay hands, and consecrations or arbitrary conveyances of them to ⁴ religious houses, without assent of the bishop, are only forbidden. Neither was any canon of a general council as yet found, that purposely commanded payment of them; nor any that expressly supposed them a duty of common right, before that ⁵ of *Lateran* in the year M.C.CXV. held under pope *Innocent* the third, about which time, ecclesiastical authority became more powerful, the canons were more received into practice (that before were little, especially herein, obeyed) and parochial right to tythes grew to be more established; whereof, more in the next and last part of our general division, and in the *English* practice. But if that canon in the *Lateran* council, held under *Alexander* the third, against arbitrary consecrations of tythes without assent of the bishop, might be understood literally, and of new tythes so created (neither is any thing in the council that denies that to be the meaning of it) then needed we not perhaps seek further for the cause of that assertion amongst our common lawyers, *That, before the council of Lateran, every man might have given his tythes to what church he would*. Whoever observes the practice of the preceding time only, and the words both of that council, and, to the same purpose, of the other held under *Calixtus* the second, may well enough be persuaded, that the intent of those canons was no otherwise. But in regard we find that canon of *Lateran*, under *Alexander* the third, to be differently interpreted by *Innocent* the third, within twenty or thirty years after the making of it, and understood only of feudal tythes formerly granted out from the church into lay hands (according as the canonists after him also take it) we cannot be altogether so secure of that other interpretation. In *Lateranensi concilio* (saith ⁶ *Innocent*, meaning that under *Alexander* the third) *est inhibitum ne quaelibet religiosa persona ecclesias & decimas de manibus laicorum, sine consensu episcoporum recipiat: per quod indirecte datur intelligi quod sufficit consensus episcopi, ut licitum ecclesiae sit decimas de manibus recipere laicorum. Hoc autem de illis decimis intelligimus quae laicis in feudum perpetuo sunt concessae*. But we must take it upou his word only, and the credit of the following canonists, that the canon was so to be understood. They may, as they will, understand it by judicial application; but you may at least doubt still, that the historical understanding of it, is to

^a Vide prolegom. ad corpus juris canonici auspiciis Gregorii XIII. epit. 14.

¹ Vide Marianum de reb. Hisp. lib. 9. cap. 11.

² In extr. tit. de dec. c. 33. cum non sit. de vide caput prox. §. 1. apollonica.

editum, & abbatem Uspergensem.

³ A. D. 1618.

⁴ Vide infra, c. 7. §. 1.

⁵ Extr. de his quae t. a prael. sine assent. episcopi c. 7. cum

⁶ Reg. 2. lib. 9.

⁷ Cap. 13.

be had out of arbitrary consecrations before practised. And it was even equal to ordain, that laymen should not arbitrarily consecrate, and that they should not consecrate without assent of the bishop; every bishop, I think, being supposed a careful observer of the former canons, which would have induced parochial right to tythes, and general payment. So that what in this kind might not be done without his assent, was conceived as likely to be never done to the church's prejudice. Let every able reader judge here; but let him not be much swayed with the rabble of late canonists, that go away clear with this of pope *Innocent*. When the pope had said so, they made no scruple of the truth of it; and one takes it, as their fashion is, from another with too much easy credulity. But although this be not sufficient ground for that assertion of our common lawyers (which clearly, being rightly apprehended, is true; though lazy ignorance cry against it, even to hoarfulness) yet enough other will be found, whereof more toward the end of the tenth chapter.

Of the time from M.C.C. or near thereabouts, till this day.

CHAPTER VII.

- I. *The canons of general councils, and decretals, for parochial right in tythes, not formerly otherwise conveyed, which now became more established.*
- II. *The opinion of the canonists, in the question of what immediate law tythes are due by, is, that they are payable jure divino.*
- III. *How the same question is determined by the opinion of the schoolmen.*
- IV. *Of those that held them meer abns.*
- V. *The opinion in divinity, that concludes them due jure divino. With a determination of the University of Oxford touching personal tythes.*
- VI. *Laws, customs, and practice of France, in exaction of them. Of their feudal tythes at this day.*
- VII. *Laws, customs, and practice in Spain, touching the general payment of tythes. Tythes there, in laymen's hands.*
- VIII. *Customs and infodations in Italy. Payment in Venice; in Germany. Of the Hungarians, Polanders, Swedes, and others, touching the duty and possession of tythes.*
- IX. *Of tythes in Scotland. With an example of an appropriation of churches and tythes*

there, by Robert de Bruce. And something of tythes in Ireland.

IN these following times, the canon law grew to be of more force, and parochial right (through the decrees made against that former course of arbitrary conveyances, and from the passages of canon law, that supposed the general right of tythes) became to be more established. But the opinions of canonists and divines have been and are much different in the question, upon what law the general right of them is immediately grounded. But by the practice of the common laws, for so much as I have read, of all christian states, they are subject to customs, and that sometimes as well in non-payment as in payment of a less part. And infodations of them into lay hands, yet continue in *France, Spain, Germany*, and elsewhere. And of customs only and infodations we shall principally speak in the practice of this time. For, whatever might here otherwise be remembered touching compositions, exemptions, or such like, is but a mere consequent of those customs, and of the opinion that makes them due only by positive, human, or ecclesiastical law.

I. IT is sufficiently manifested in the practice of the former cccc years, that the laity did usually convey their tythes by consecrations and appropriations to what church they would, and by infodations to laymen. Their infodations were forbidden by the ² general council of *Lateran*, in M.C.LXXX, whence that most known canon *prohibemus*, before cited, was taken into the body of *Gregory's* decretals, and hath ever since been, and still is, in authority, and that also in the secular laws of *France* especially. It was in the same council ordained, that no religious orders should receive any appropriations or consecrations of churches or tythes, without assent of the bishop. *Ecclesias & decimas*, are the words, *de manu laicorum, sine consensu episcoporum tam illos* (that is, *Templars* and *Hospitalers*, against whom the provision was chiefly made) *quam quoscunque alios religiosos recipere prohibemus*. This was confirmed in the general council of *Lateran*, held under *Innocent* the third, in the year M.CC.XV. And a canon of the general council of *Lateran* held under *Calixtus* II. in the year M.C.XIX, (wherein parochial ministers were also forbidden to receive tythes, or churches, from the hands of laymen, by investiture especially, *absque consensu & voluntate episcopi*) was afterward, in divers epistles of pope *Alexander* the third, received ² and confirmed. And although many decrees were before against those conveyances, yet till these general councils, under *Alexander* and *Innocent*, neither was the authority of the church so powerful, neither were the epistles sent from *Rome* so frequent, to put that in execution, which had so been there established against that challenged right of the laity. But by

² Videtur, cap. 24. & 9. edit. Romani & extr. de dec. c. 19. & de preb. & dig. cap. 31. in *Lateranensi* tit. de jure patron. c. 17. nullus & de his que sunt a prelat. c. 7. cum apostolica. ² Extr. de jure patr. c. 10. 11. 21. & de instit. c. 3. ex frequentibus & ap. pend. concil. *Lateran.* par. 15. cap. 18.

this time, when the arbitrary disposition of the owner was thus provided against (reference being made to the bishop's assent, that was bound to square all things by the ^h canons, which would have tythes paid parochially, and became to be much more obeyed than before) it grew frequent, to have decretal epistles sent from *Rome* into every province, both to ratify the former consecrations and appropriations, (which the popes ^c began also, at pleasure, to declare sometimes void, if made by laymen alone) and also to exact parochial payments of other tythes, not canonically conveyed out of the parish: And the reason sometimes was added; that is, ^d *perceptio decimarum ad parochiales ecclesias de jure communis pertinet*; And the general council ^e of M.CC.XV. had taken it clear, and so expressed it, that in *synodo universalis domini quasi quodam titulo speciali sibi Dominus decimas reservaverat*: And after a few words, the canon is concluded with *decimare cogantur ecclesie, quibus de jure debentur*. And the action for parochial tythes in those times, as now, is called ^f *jure communis fundata intentio*; that is, by common right, tythes predial and mixed were due to the rector of the parish (were he bishop or priest) if they were not otherwise, by especial title, enjoyed by some other church, or discharged by canonical exemption. But how little this common right had before been practised, appears not only in what is already declared, of the use of the former time, and in the doubts made by *Gratian* in the decree, and pope *Lucius* the third, *Alexander* the third, and others, in their epistles teaching it; but also in other occurrences of somewhat before the beginning of these *ecce* years; amongst which you shall find, that both the religious and secular of the clergy would usually take covenants from their tenants, to pay them the tythes, and so prevent the parson of the parish where the laud lay. If parochial right had then been common, how could such a covenant have prevented the parson? That practice is both related and remedied in the ^g general council of *Lateran*, of M.CC.XV. and an example of it in the archbishoprick of *Matera* is remaining among the decretals ^h of *Innocent* the third; where also it appears, that the archbishop had complained to the pope, that the land-occupiers in his diocese used to divide their tythes at their pleasure, and arbitrarily give part to the church, part to the poor, part to their kindred, for which he had remedy by pontifical decree. Hereto you may add that of an old council of ⁱ *Tribur*, in M.CC.XV. *Ubi quis decimas persolvebat vivus ibi sepeliatur & mortuus*. As if every man, by the choice of the place of his devotion in paying his tythes, might make it his parish. And when *Alexander* the third, about the year M.C.LXXX. was to answer the doubt touching parochial right of predial tythes (that is, whether they were due *intuitu territo-*

rii, in regard of the limits within which they grew, or *obtentu personarum*, by reason of the person, and so to be paid to the church where-soever the owner for the most part received the sacrament and heard divine service) he knew not how to determine it; and withal acknowledged, that although it had been often moved, it was never resolved. *Sane*, saith ^k he, *cum hujusmodi quaestio temporibus praedecessorum nostrorum mota fuerit, non determinata, aliis intuitu territorii, aliis personarum obtentu decimas asserentibus debere persolvi, non est nobis facile certum tibi dicere*: which are the words of that epistle; a part whereof is in *Gregory's* ^l decretals. So, that although by the canons they would have had an universal payment of tythes, and although some much antienter authority ^m be in that law for parochial payment; yet they had long before, and about the beginning of this last *ecce* years, so much controversy touching parochial right, that even thence alone you may see, it was not so much as, in opinion, established. Enough more like examples are of that time. And you may observe, that where pope *Alexander* doth by decretal command a parochial payment in the case of the monks of ⁿ *Bosley* (for so you must read in *Gregory*, not *Besse*, as it is in the most polite edition) yet his ground is from a use of parochial payment in that particular; without which, he had been as uncertain there, as he and others are in epistles of that time. But so far also was the former course of arbitrary consecrations now withstood, that not only the lay owner might not of himself consecrate the right of his tythes at will, but also, although the bishops assent had joined with his in conveying any tythes (except only such as were infodored to him before the council of *Lateran* of M.C.LXXX.) the conveyance had been declared void; and to that purpose only, of passing feudal tythes out of lay hands to the church, was the bishops assent ^o decreed to be sufficient. But however, through those oecumenical and pontifical decrees, a more certainty of parochial right was now begun; And though those old canonists also, pope *Innocent* the fourth, cardinal *Heslerius*, and some others, about the year M.CC.LX. writing on the decretals, took parochial right as a thing clearly established in law; yet it is reported, by some antients of good credit, that sufficient remedy was not fully provided against that practice of the former course of arbitrary dispositions of tythes, till the general council of *Lions*, held under pope *Gregory* the tenth, in the year M.CC.LXXIV. In which, they say, it was constituted, *ut nulli hominum deinceps liceat decimas suas ad libitum, ut antea, ubi vellet assignare, sed matri ecclesiae omnes decimas persolverent*. So *Randal Hliden* the monk of *Chester*, *Henry* ^p *Knigh-ton* abbot of *Leicester*, and *Thomas* of *Walsingham*,

^b C. 16. q. 1. c. 45. & 46.

contingat.

^c Ibid. c. 33. cum non sit.^d Ibid. c. 31. dudum adversus.^e Tom. 3. epist. decretal. lib. 1. p. 433.^f Epist. decretal. lib. 3. ms. in biblioth. Cottoniana.^g Ext. tit. de dec. c. 4. commissum. & append. ad concil. Lateran. part. 13. cap. 19.^h De his quae l. a proel. sine conf. c. 7. cum apostolica.ⁱ Mr. in biblioth. Cottoniana.^k Extr. de dec. in c. 39. cum^l C. 56. & extr. de passis. c. 17.^m C. 11.ⁿ De decimis c.^o Ext. tit. de dec. c. 4. commissum. & append. ad concil. Lateran. part. 13. cap. 19.^p Mr. in biblioth. Cottoniana.

a monk of S. Albans, tell us; and all three of them lived but about c. years from the time of that council, and might so perhaps, have had for it some antienter authority from some now lost monuments. And upon this, doubtless, was that assertion corruptly related in the printed examination of *W. Thorp*, before *Arundel* archbishop under *Henry IV.* where he answers, *That one pope Gregory X. ordained new tythes first to be given to priests now in the new law.* But the body of that council (which was first published only in the late edition of the general councils at *Rome*, and is now also in the last edition of *Binius*) hath no such matter in it. One canon is there, especially against alienation of revenues of the church by clergymen, and another, against usurpation¹ of them by lay patrons in time of vacancy; but neither out of them, or the rest, can you extract what those monks have related. But although they might err in the relation of the canon, yet, doubtless, they had some special memory, that parochial right to tythes had been but of late years, and sometime after *M.C.C.* received into the more known and practised law; although the doctors so confidently before talk of it. For we must not doubt, but that those elder canons, notwithstanding their great authority, were by most different degrees of time received into use, and in some places, not till long after *M.C.C.* As we see particularly in that of the practice in the diocese of *Palencia*, till *M.CCC.XXII.* which was, that every man, wheresoever he dwelt, yet might declare himself to be of what parish he would, and to that parish only give his tythes: Which was remedied by a council then held at *Villadolid*, under *William* bishop of *Sabina*, the pope's legate; where he begins with, *parochiarum divisio a sanctis patribus instituta certitudine parochianorum & decimarum debitam solutionem inducit.* For indeed, parochial payment regularly was now grown, by the canons gaining force, to be the only *debita solutio.* The next authority of a general council for parochial right (after that of *Lateran*; wherein yet nothing directly constitutes it, but rather it is supposed, as of former time) is the condemnation, in the council of *Constance*, of *Wickliff's* assertion, That tythes were mere alms, and that parishioners might, *ad libitum suum*, as his position was, *eas auferre propter peccata suorum praclatorum.* And since that, in the general council of *Trent*² under *Pius IV.* about *M.D.LX.* this canon was published. *Non sunt ferendi qui variis artibus decimas, ecclesiis obvenientes, subtrahere moliantur, aut qui ab aliis solvendas temere occupant & in rem suam vertunt, cum decimarum solutio debita sit Deo. Et qui eas dare noluerint aut dantes impediunt, res alienas invadunt. Praecipit igitur sancta synodus omnibus cujuscunque gradus & conditionis sint, ad quas decimarum solutio spectat, ut eas (ad quas de jure tenentur) in posterum cathedrali aut quibuscunque aliis*

ecclesiis, vel personis quibus legitime debentur integre persolvant. Qui vero eas aut subtrahunt, aut impediunt, excommunicentur; nec ab hoc crimine, nisi plena restitutione secuta, absolvantur. For popes decretals of this time, I refer you further to the laws made or received in *England.*

II. In the opinions that have been since the beginning of these *cccc.* years, touching tythes; the chiefest to be observed here, are those which determine, by what immediate law tythes are payable. For however, very many other questions about the duty of them, are usually disputed; yet resolve but this, one way or the other, and most of the rest that follow, about customs, appropriations, exemptions, and such more, will soon have little doubt. This point hath been controverted both betwixt canonists and divines, and between divines and others of their own profession. The canonists, except very few, with one consent grounding themselves upon the letter of some of those passages of provincial councils, of fathers, and of popes, before remembered, generally deliver, that predial and mixt tythes, are due to be paid *jure divino*, which is commonly taken for the divine moral law, and they usually cite also the *Levitical* precepts, to justify it. Yet do they allow the right of former tythes, canonically settled by consecrations, appropriations, and exemptions also for the most part. For to those they require pontifical confirmations, or a supply of them, by such prescription of time, as may suppose them. For they take this ecclesiastick revenue to be no otherwise due to the clergy by common right, but that the pope, (whom they, to the utmost maintain, as they have reason; for out of the pope's authority, first came their general profession, as it now remains one) may as a supreme steward of the clergy's maintenance, dispose of this or that particular part of it. This is their common opinion, although some, in the point of exemptions, have made scruple. But where none of those special titles precede, there they clearly agree also, that by common right, all predial and mixed tythes are due parochially. Neither need³ the rector in his libel, upon his *actio confessoria* (which is the general name of such actions as lie for demand of incorporeal rights, as with us, our *quod permittat, quare impedit, droit d'aveu*, &c. and the like) propose more, than that the increase is within his parish; and the other titles, if any be, must be shewed in the exception, or answer. But by the way; though the doctors commonly suppose the action for tythes to be *confessoria*, and grounded upon common right; yet that great and ancient lawyer, bishop *Durand*, or *Speculator*, would have them demanded by the *condictio ex canone*, that is, as we call it, by *action upon the statute.* The canons, whereupon he would have it grounded, are those passages of *S. Jerom* and *S. Augustine*, in c. 16. q. 1. c. 65, &

¹ Apud Fox in Hen. IV. pag. 494.

tit. de electione. c. 13. in generali.

Proferat Farinac. criminal. deced. rotae Rom. 291. n. 13. alii paulim.

² Extra in lib. 6. tit. de reb. ecclie. non alien. c. 2. hoc consalsilium.

³ Sess. 25. de reformatione. cap. 12.

⁴ Speculator lib. 4. part. 3. tit. de decimis.

⁵ In 6.

66. And he takes for his authority, why this kind of action should be brought, that of *Paulus*, out of the imperials, *si obligatio lege nova introducta sit, nec cautum eadem lege, quo genere actionis experiamur, ex lege agendum est*. So that as *ex lege* in the imperials, so *ex canone* in the pontifical law, the action should be brought. He lived long since, and perhaps, in regard of the various practice that had preceded against the common opinion of his profession touching the common right, he thought it most secure for the plaintiff, to ground his libel upon the canon, rather than upon common right. But for personal tythes (which yet they agree not all to be due *jure divino*; although pope *Innocent IV.* make it a wonder to see any man deny it, and divers of them follow him; the old precedents also of libels in *Speculator* being equally for these, as for predial) they are held payable only to the church, where the owner, for the most part, receives the sacraments and divine service; not where the gain is made. Neither in them is any regard had to the parish. Whence it comes, that *Jews* and *Saracens* (because they have no personal use of the evangelical ministry) are to pay none by this law, saving in case where they hinder the continual payment of some former personal tythe had from christians. The best authority they bring for personal tythes, is that in *Deut. xii.* where *tythes and the offerings of your hands* are spoken of. By reason of that most received ground amongst them, that the tenth is due to the church *jure divino*, their most common opinion is also, that every man is bound to pay the whole tenth, or the value of the whole tenth of all increase, notwithstanding any custom or prescription to the contrary. Indeed, no reason is, that a custom should take away what God had immediately, and, by his moral law, established. The consequent is good, were the antecedent clearly proved. But some of them, and such as are of no small name, deliver their law to be only, that custom cannot wholly discharge any land of tythes, but it may diminish the *quota*, or bring them to a less quantity, or value; that is, that a custom to pay a twelfth, twentieth, or less, is good. This, some also allow only in customs immemorial, which they suppose to have the force of a papal privilege or exemption. But, their common and received opinion is, that in predial and mixt, no prescription or custom to pay any less part or value than the tenth, or *de modo decimandi*, much less *de non decimando*, can be good. (Which well agrees with the civil law also. For by a rescript of the emperor *Anastasius*,^a no prescription may be of non payment of all or a less part of tributes, subsidies, or other rents of the publick treasury; that is, of such things as are due to the emperor *in signum universalis dominii*, as tythes are supposed to God and his ministers.) Except only, where the certainty of some equal yearly payment, without regard to every annual increase, may be

adjudged to be equivalent to a tenth, by reason of the uncertainty of sterility or fruitfulness. In this^b case they allow a custom, although the tenth of every particular year be not paid; because, *ecclesia*, they say, *potest se habere ad damnum vel lucrum*, indifferently. But those other common opinions of theirs, are so frequently obvious, that to cite authorities for them, were but to imitate *Rablais* his *Brideye*. Yet we may specially remember, that the doctors of the *Rota of Rome*, I think, according to their profession, also above c. years since, determined, *quod quota denaria est de jure divino bodierno die*. But some canonists withal are, and those of no small note, that agree, the determination of the tenth to be only *de jure ecclesiastico*, and that no more *jus naturale*, or *divinum morale*, is in it, than what commands a competence of means to be given to the priesthood. So *Couvaruvias*; so, some others. But few enough are of this opinion. All that are of it, make no doubt of the right of customs (provided always, that a sufficient revenue be possessed by the minister) but allow the payment of them to be diminished or taken away by custom or prescription. But they are generally against the possession of feudal tythes held by laymen (which they suppose, but falsely, to have all had beginning from the church) although infeodated before the council of *Lateran*. Yet indeed some of them express an allowance of them; but that is rather in mingling common laws with their canons, than writing as canonists. The common laws of all nations (where feudal tythes are; and I think certainly, in all christian nations feudal tythes at this day are found) allow them now, and suffer the canons to have no power over them. And thence is it (lest they should grossly determine against such possessions as the church antiently, as well as the laity, had by infeodations settled, and posterity still maintained) that some receive into their conclusions an admittance of what their own profession abhors. Which may not be amiss said also of such of them as maintain a custom in the *quota*, or the like. For that is done rather by striving to conform the canons to the common laws, or secular constitutions of the state where they live (as our civilians, in the practice of the antient canon law, do here also,) than by judging according to the body of the canons, that regularly allow no sufficient exception against parochial payment of the whole predial tenth, but only papal authority, or a title canonically settled in some other church. And the better to make these infeodations stand with their opinions, they have also a usual distinction of *jus percipiendi*, and *fructus decimarum*. The *jus percipiendi*, they say, cannot be transferred, nor ever was, by the old infeodations, because every layman is incapable of it: But the *fructus decimarum* only, as they teach, is what passed, and is still possessed, in consideration that the possessors should defend the church from here-

^a ff. de condit. ex leg. l. Unie.

^c sua nos, tit. de decimis.

^d Gl. & Panormitan. ad c. in aliquibus extr. de decimis, ali.

^e Variar. resolut. lib. 1. cap. 17.

^b Ad tit. de paroch. & al. paroch. extr. c. significavit.

^c C. tit. de prescript. 30. vel 40. ann. l. 6. compert. sed & vide ibid. Bald. Crn. & Salcerum.

^d Petr. Ravenn. apud Majorem in sent. 1. dist. 37. quest. 36.

ticks and tyranny. The sum of what the old canons have, both against ancient and new innovations, is in the former chapter noted; and according to them, how that distinction will hold, I see not. But, among them, great opinion is also, that all feudal tythes are to be restored to the church, and that he which holds them, may not lawfully pass them over to another layman; but may only, with assent of the bishop, give them to some church. *Nec multum refert quae ecclesia habeat diuimodo extirpentur a laico*, as *Panormitanus* says. And to this, they abuse that canon *prohibemus*, of the council of *Lateran*, that was not indeed made against tythes then incoded, but only against new innovations, as pope *Innocent IV.* there well teaches. For, saith he, *non loquitur de decimis incodatis, sed de aliis male detentis*. Which justifies what is in the former *ecce.* years, against the received interpretation, delivered.

III. The divines, since the beginning of this time, have had their several determinations and doctrines upon this point, and those may be, for method, put chiefly in a three-fold difference; Although rather the second doctrine, as presently will appear, were but an issue of the first; And the chief question among them comes to this, Whether, by God's immediate moral law, the evangelical priesthood have a right to tythes, as to their inheritance, in equal degree, as the layman hath to his nine; or if they have them only as by humane positive law, and so given them for their spiritual labour? That is, in brief, Whether by original distributive justice, or by commutative, they are payable? Although, in the opinion which we shall here make the third, all positive or human law be, for the most part, neglected; whereof, more presently. But in that (which we here make the first of those three opinions) it hath been held, that the tenth considered *quoad quoniam partem*, or, as it is a determined part, and denoted from that number, is due only by law positive and ecclesiastical; but, *quoad substantiam suam*, or *cleri sustentationem*, or in regard to it, as it denotes a necessary or competent part of the maintenance of the clergy, that is due by the divine moral law. And to the purpose of this distinction, they interpret the *Levitical* commandments of tythes; And deliver that *quoad substantiam suam*, or as it was generally for the maintenance of the ministry in the Jewish church, it is moral or natural, there being, according to consideration of it so far, the very character of it written in the tables of mens hearts; that is, that spiritual labourers are to be rewarded with temporal bounty, as every labourer is worthy of his hire. But *quoad quoniam partem*, it is, they say, a judicial, or ceremonial, as some will, and that it hath been brought into the law of the gospel by ecclesiastical doctrine and constitutions (both which we have before explained) proceeding from it only *per vim ejus exemplarem*, or by imitation of

the Jewish state, ordered by the Almighty; and not in that regard *per vim obligativam*, or any continuing force of it under the gospel. And that the church was not bound to this part, but freely might as well have ordained the payment of a ninth, or eleventh, according to various opportunity. This is commonly taught by the old schoolmen, *Hales*, *Aquinas*, *Henricus de Gandavo*, *R. de Media Villa*, cardinal *Cajetan*, and divers others; (but fullest, in my judgment, by *Job. Major*) and maintained by great men, that in our times follow their ways of disquisition. The first that expressly made this distinction, was that *Alexander Hales*, that lived about *mccc. xxx.* and thus determined; *Praeceptum de decimis est praecipuum judiciale; unde non est dicendum morale, quia secundum suam determinationem, that is, secundum quoniam partem, non est scriptum in corde hominis; nec ceremoniale, quia non est datum principaliter in figuram significationis; sed judiciale, quia datum simpliciter in rationem acquiritur mutuae distributionis, ut sit aequalitas dati & accepti inter seminantem spiritualia & dantem temporalia, secundum quod possibile est, &c.* And *Aquinas*; *determinatio decimae partis solvendae est auctoritate ecclesiae*; and adds, that the ground of it, which he calls *radix*, is the text *h*, *If we sow unto you spiritual things, is it a great thing, if we reap your carnal things?* The same is by *Hen. de Gandavo* expressed in these words; *Adveniente lege evangelica & cessantibus ceremoniis, cessavit & solutio decimae, pro quota illa: sed mansit pro illo quod in illa erat jure legis naturae, & ad illud reduxit lex evangelica*; and delivers accordingly the right of them to be *partem de jure naturae & evangelii*, that is, *quatenus vacantibus divino ministerio communiter ab omnibus debet provideri*; and, *partem de jure humano ecclesiastico, or positivo*, that is, *quoad quoniam partem*. And to the same purpose, the rest. But whereas some make that learned *Hales* the first author of this doctrine; doubtless they err. For however *lex divina, Deus praecipit*, and the like, frequently denote the right of tythes in the former *ecce.* years; yet first consider, what is there admonished touching the practice of the time, and from thence you may, perhaps, interpret their meanings to be otherwise, than as they are commonly, and especially by the canonists, taken. Could the church have, before his time, held clearly, that the tenth was due by the moral law, and yet, against their own consciences, generally, give way to, and practiced also, those conveyances, which can have no power over that which the moral law, ever binding uniformly, hath ordained? And indeed, some great doctors teach, that the *jus divinum*, denoted in those passages of the body of the canons, was no otherwise understood, than only that we are bound to it by the law positive of the church, imitating the divine judicials (which retain still, as cardinal *Cajetan* teaches, their *vim exemplarem*, though not

^a Ad 3. sent. dist. 37. quest. 36.
csp. q. 12.

^b Quodlibet 4. q. 28.]

^c Part. 3. q. 51. in. m. b. 3.

^d 2. q. 87. art. 1.

^e Epist. 1. ad Corinth.

obligativam)

obligativum) and is well enough thence styled *jus divinum*. *Cum ergo dicitur*, says the cardinal, *lege divina, aut Deo jubente ad decimas tenemur; intellige exemplariter*. Neither doth he otherwise interpret other passages of the fathers, which are to that purpose. *Neque aliud* are his words, *sancti patres intellexerunt*. And remember also, that those fathers affirm it not in disputation, but only in exhortation to the people; which is specially observable to any that knows the course of their writing. With *Cajetan* also, in that the law for tythes is not moral, *Bellarmin*, *Suarez*, *Malder* bishop of *Antwerp*, and late professor at *Louvain*, and others accord, and make it the *communis opinio theologorum*: and some will have it ceremonial, rather than judicial. But we dispute not thereof. But also an example is brought out of *S. Ambrose* his use of *quadragesima divinitus constituta*, denoting the ecclesiastick commandment of Lent, that was but in a kind of imitation of our Saviour's abstinence. Which shews, that what is from the holy word exemplarily taken, is denoted sometimes with such attributes, as might signify a moral constitution. And the truth is also, that *jus divinum* is very often, and was, about the time of the body of the canon law published, taken for *jus ecclesiasticum*, or *jus civile quod ad ecclesiae administrationem spectat*; as you may plainly see 'in an epistle of *Alexander III.* that lived till M.C.LXXX. where he directs, that a church having been in possession XL. years of tythes growing in another parish, should have them still by that prescription, because in such case, *de jure divino & humano melior est conditio possidentis*. Who sees not, that he there uses *jus divinum* for positive and human law of the church? What hath the prescription of XL. years, or primer possession to do with the direction of divine moral law? Or indeed, if he had meant, that tythes, *quoad quotam*, had been due for the minister's salary by the divine moral law, how could prescription have had place against it? Part of that epistle is ^m in the body of the canon law. But because it is fuller, and indeed more authentic, in a very ⁿ ancient copy of decretal epistles (the most of them being of *Alexander III.*) it shall thence be hither faithfully transcribed. *Alexander Mauricio episcopo. Ad aures nostras, te significante, pervenit, duas ecclesias scapuis sub examine tuo litigare super decimis quas una ecclesiarum in alterius parochia XL. annis possedit, ac per hoc ^o petit ejus actionem extentam. Altera vero volens eas jure parochiali evincere, praescriptionem non debere sibi obesse proponit. Ideo quid juris sit in hoc casu, tua nos duxit fraternitas consulendos. Tuae itaque fraternitati literis praesentibus innotescat, quod jure divino & humano melior est conditio possidentis, quoniam quadragenalis praescriptio omnem prorsus actionem secludit*. And, that *jus divinum* was in that sense taken in these ages, appears also by

Hales; where, although ^p he before held clearly, that the commandment of the *quota pars* was judicial; yet he says, that *decima sicut Domini generalis census* is payable *jure divino*, that is plainly, in his meaning, by the ecclesiastick constitution of the church, imitating the divine judicials. Neither was the phrase otherwise used in that of the general council of *Lateran*, held before the time of *Hales*, in the year M.C.XV. *Illae quippe decimae necessario sunt solvendae, quae debentur ex lege divina vel loci consuetudine approbata*. I know the canonists miserably wrest themselves about the interpretation of that place. But, when they have done all in mistaking it, could the council think, that *loci consuetudine*, some were due, yet that all *lege divina*; taking it for the moral law? For, if any, then all, by the moral law. Clearly then the *English* ^q of that was, *those are necessary to be paid, which are due either by the positive law of the church*, (which extends not always universally) or *custom of the place*. Some refer that *ex consuetudine* to personal tythes, supposing ^r them due only by custom or positive law. And that also might be a tolerable interpretation, if at the time of the council such a distinction had been received betwixt personal and predial. But can it then stand for truth, that *Hales* was the first that branched this opinion of the *quota* being due by human determination in the church, and not by the divine moral law? Indeed he was the first that accurately disputed the question as a schoolman, and expressly made the distinction, but clearly not the first that so held the point. To the former testimonies hereof, add that of *Hugo de S.* ^s *Victore*, who lived near c. years before *Hales*. He speaking of payment of tythes before the law, under the law, and since concludes with; *Primum igitur ante legem, parvulus consilio nutritur (Deus) postea sub lege exercitatus praeepto tentavit. Novissime sub gratia perfectus in libertate spiritus ambulare permisit*. By this first opinion of the schoolmen, to which the ancient fathers are, you see, by some of them squared, no difference is to be made of predial, mixed, and personal tythes, however some scruples about that difference, have been needlessly handled by them. For *quoad substantiam decimae, or decimarum sustentationis*, as they call it, or, as the labourer is worthy of his hire, both are equally due. The moral law, according to them, designs not out real possessions to be more subject here to the natural part of commutative justice, than personal profit. And therefore also *Alexander Hales* aptly determines, that *decimae tam personales quam praediales sunt in praeepto*, that is, both *quoad substantiam*, but neither *quoad quotam*. And, that in *Venice*, and other such cities, where no predial tythes are, a personal tenth is due by the positive laws of the church, as in them also, a sufficient maintenance is to be had for the clergy, by the moral or natural law. In sum, by this

^a Ad 2. q. 72. art. 1.

^b Videtur J. Maior. ad 4. sent. dist. 15. quodst. 3.

^c Extr. de praescript. c. 6. ad aures.

^d In m. lib. 6.

in bibliotheca Coronaria.

^e L. parat ejus actionem extensam.

^f Part. 3. q. 11. membr. 3.

^g Bellarm. etiam optime in.

terpretau. lib. 2. de cler. esp. 26.

^h Vide Henric. Bowh. in tit. de dec. c. pervenit.

ⁱ Erudic. theolog. lib. 1. part.

11. cap. 4.

opiuion, customs of payment of lefs, of nothings, and other civil titles, that have force against ecclesiastick law positive, are allowed, so long as the maintenance of the minister be otherwise competent. Both failing, then is that defect to be supplied, notwithstanding any civil exception, due by the divine, natural, or moral law; which, inscribed in all hearts, admonishes, that reward is due to every labourer; much more to him of the spiritual harvest. Other questions about tythes are disputed in the schoolmen, but it is not hard to conjecture, how the most are to be determined, according to them, by their resolution of this alone; therefore I omit them. You see how opposite this opinion is to that received among the canonists, betwixt whom and the schoolmen¹ was usually great dissension. It is not to be doubted, but that the schoolmen looked much farther into all that they meddled with, than the canonists could do. And had the canonists agreed herein with them, they might, with fewer absurdities, have maintained divers of their scrupulous positions. And some of² them were so moved at the schoolmens disputations, about *Hales* his time especially, that they knew not which way at all to determine it. This difference of the canonists and schoolmen is remembered by *J. Major*. *Theologos hic, faith³ he, canonistae haereticos vocant, quia dicunt decimas non esse de jure divino*. But which are here the more competent judges of the two, he tells you further, in his answers to *Peter of Ravenna*, a canonist of his time. He lived about c years since.

IV. THE second opinion in divinity, is of those, that (having their first ground out of the determination of the schoolmen) held tythes to be mere alms, and not to be paid to the ministers of the gospel by any parochial right, as a necessary duty to the evangelical priesthood, but that they might be retained and disposed of at the owner's will; especially if the pastor⁴ well performed not his function. Of this, were both some of religious orders in their preaching, and also others opposite enough to them in doctrine. The *Dominicans* and *Franciscans* especially (who began both about the year m cc x, and had in their monasteries store enough of schoolmen) made it a gainful doctrine to teach laymen, that they were not bound to pay their tythes to their ministers, as to whom, by any law of God, that portion necessarily belonged. For when the determinations had preceded, by which the *quota* was concluded not to be due *jure divino*, they of this side neglecting, for the most part, the positive and human laws made for them, and regarding only the express law of God, taught them due only as alms, or as what *debito caritatis*, not *debito justitiae*, was to be dispensed. By this doctrine the *Mendicants* especially often got them to themselves (like the

old⁵ *Eustathians*) as alms to be arbitrarily disposed of to such as took any spiritual labour, as also made their own detaining of them in lands, out of which they were parochially due, to seem the less wrongful. But against their detaining of parochial tythes a canon was made in the general⁶ council of *Vienna*, held in m.ccc.xl, and their doctrine was taxed by pope *Innocent* the fourth about m.c.c.l, writing⁷ upon the decretals, where he calls them *isti novi magistri, & praedicatores qui docent, & praedicant contra novum & vetus testamentum*. And *Richard* archbishop of⁸ *Armagh*, complains against them for possessing the people with an opinion that the command of tythes was not moral, but only ceremonial, and not to be performed by constraint of conscience, to the minister; and that out of whatsoever at least was given to any of the four orders of *Mendicants*, no tythe was in conscience to be deduced for the ministers. With these in substance did others also at the same time agree, that otherwise were opposite to the whole nation of friars; as with us *John Wickliff*, *Walter Brute*, *William Thorp*, and some such more, whose arguments for their opinions are at large in *Fox* his acts and monuments of the church of *England*, whither I had rather send the reader than stuff this place with them. *Wickliff's* position (for⁹ which as for an heresy some have been since questioned with us) is before related, as it was condemned in the council of *Constance*; and *Thomas Walden* the provincial governor of the *Carmelites* in *England*, about the end of the time of *Henry* the fourth, wrote against him in it, vindicating the duty to the church, but not so much, *secundum quoniam sed magis secundum substantiam*, as his¹⁰ own words are. Hereto may be added, one of the articles of the *Bohemians*, published about cc years since, wherein a divine right to tythes since the¹¹ gospel, is denied; whereupon also they long since took all temporalities from their ministers, and brought them to¹² stipends. Others have been possessed with this conceit, and among them you may remember *Gerardus*¹³ *Sagarellus*, before *Wickliff*, burnt also for an heretick. And the great *Erasmus* gave the common exacting of tythes by the clergy of his time, no better name than tyranny. But that of his, divers have sufficiently both reprehended and confuted, and especially *Albertus Pius Carpenfis*, in his labour against him. With this may be reckoned that of *William Russel* a *Franciscan*, who under *Henry* the fifth had publicly preached, that the payment of personal tythes to the pastor, were not in God's commandment; but that it was lawful for every christian to dispose of them arbitrarily to charitable uses. But of him, see more in the next and third opinion, where the words of his doctrine are expressed in a letter from the university of *Oxford*, to the convocation of the clergy.

¹ Ockam. lib. 1. dialog. 3.

² Rayntrius apud Hostiensium in summ. tit. de decimis, num. 10.

³ Ad sent. 3. dist. 37.

quart. 36.

⁴ See Wickliff his conjuncts to the lay and parsonage, art. 1.

⁵ Vide Zonar. in concil. Gangr. can. 7.

⁶ Clementin. tit. de decim. c. 1. religio.

⁷ Ad extr. tit. de paroch. c. ult. significavit.

⁸ In defensor. curiarum. 2.

vide, si placet, Alex. lib. 4. consil. 60.

⁹ Et videlicet in fascicul. rer. expendarum, pag. 143. in Wiclevis thesibus.

¹⁰ Hen VII.

fol. 17.

¹¹ Doctrinal. fidei tom. 1. lib. 2. artic. 3. cap. 64. & 65.

¹² Fox. in Hen. V. pag. 602.

¹³ Joh. Major.

in sent. 3. dist. 37. q. 36.

¹⁴ Paul. Gryfaldus apud Camill. Borell. in consiliorum part. 1. consil. 45. edit. a J. Baptif. Caeſare.

V. THE third opinion is of those who agree with the canonists, that the right, of the *quota* of tythes, immediately is from the moral or divine natural law; some impudently urging with a commandment given to *Adam*; others of them providently restraining all their arguments to such grounds for the conclusion, as may be had out of *Abraham's* example, referred to the application of it in the epistle to the *Hebrews*; but others also not so circumspectly, taking in the *Levitical* commandments of tythes for their most sufficient authority. For the first kind that talk of *Adam*; I think indeed that in the time of this light of learning, none have durst venture their credits upon such fancies. Yet, that it was some opinion that had at least in pretence many authors in the church of *England*, in the blinder time of our ancestors; I thence collect, for that in a *penitential* made for direction of priests in auricular confession, and written, as my copy is, about *Henry the sixth*, the priest's examination and advice upon the point of tything, is thus expressed: *Hast thou truly do thy tythings and offerings to God and to holichurch? Thou shalt understande that at the beginning of the worlde, when ther was but oo man, that is to seyn, Adam, God chargyd him that he sholde truly of al maner thyng geve God the Xⁿ parte, and bad hym that he sholde teche his children to doo the same maner, and so forthe al men into the worldis ende. And forasmuch as ther was that tyme no man to receive it of hem in the name of holichirche, and God wolde not that thei sholde have but ix parties, therefore he commandid hem that of every thyng, the tithre parte sholde be brent. I fynd that afterward Adam had two sounes Cayme and Abell. Abell tithed truly and of the best, Cayme tithed falsly and of the worst. At last the fals tyther Cayme slough Abell his brother, for he blamed hym, and seyed that he tythed evel, wherefore our Lord God accursid Caym and al the erth in his werk. So ye mow se that fals tything was the cause of the first manslaughter that ever was, and it was cause that God cursid the erthe.* It is literally transcribed as I find it; That writing of *Cayme* for *Cain* is ordinary in the monuments of that age, as you may find in *Wickliff's* works, *Waldensis* his doctrinal, and others of like nature. But see here the effect of perverse opposition on both sides. Some friars, providing only for their own wealth, would have had them reckoned meer alms, and so have gotten them from the secular priests, and others would have had them retained by laymen. The secular priests on the other side would rather instruct the laity with ridiculous fallhoods (in the terms whereof they would not spare to abuse the holiest name) than not seem to say enough for their own gain. In those times they did so: they saw the friars dangerous doctrine to their revenues, and therefore omitted no argument, no course in opposing it. A notable testimony whereof is had also in that of friar ¹ *William Russel* a *Franciscan*, that in the convocation of

5 *Hen. VI.* was vehemently accused because he had preached, that personal tythes were not necessarily payable by God's commandment, but that every man might dispose them at his pleasure in charitable uses: The sum of which was, that every man might or should rather give them to the begging friars, a doctrine of no small prejudice to the secular priests, if once publicly received. This *Russel* was by the convocation enjoined to recant at *Paul's* cross on a prefixed day, before which, he fled the kingdom; and after publick citations against him, was solemnly pronounced an heretic for it; his opinion also being condemned by both the universities. The letters then sent to the convocation from *Oxford*, both shew the determination of that university on the point, and the particular tenet also of *Russel*; therefore we insert them. The direction is to the clergy of *Canterbury* province from the *universitas studii generalis Oxoniæ*, after which follows a preface in general terms against such as forsook the ancient ways and fell into new heresies; then they go on with; *Sed quia in multis novitas* (so are the words of it, as I have it faithfully transcribed² to me through the courtesy of my most honoured friend Mr. *Thomas Allen* of *Glocester Hall*; whose name it were not without offence in me, at all to mention without special reverence, as well to his singular humanity as to his fulness of learning and worth in good arts) *parit pericula, in quibus antiquitas non peccabit, illud esse censumus inconcussum tenendum quod ab antiquis patribus constat clarissime præfinitum. Verum quia nuper nobis innotuit cujusdam novelli (that is of Russel) insana doctrina contra decimas personales (cujus miramur audaciam & dolemus insipientiam) sed ejus pertinaciam & ecclesiae contemptum sustinere veremur, & ne nostra³ taciturnitate seu negligentia tacito consensu adscribatur, in ipsa materia scribere curavimus quod concordēs sentimus, & in evidens testimonium nostro sigillo communire decrevimus, ad veritatis dilucidationem & obsequium ecclesiae, ut senemur.* Then they deliver their determination thus. *Dicimus & firmiter concipimus quod decimae personales tam ex præcepto juris divini quam sanctorum patrum traditionibus sub autoritate ecclesiae in concordi juris judicio debentur ecclesiis & earum ministris curam animarum habentibus & sacramenta ministrantibus ex autoritate ecclesiae. Magna namque est sacrosanctae ecclesiae autoritas extra quam fides plane perpendit nullam posse pervenire salutem fidelibus. Ne illic ergo resideat spiritus pestilens aus opinio corrumpens ubi locus quaeritur fidei orthodoxae, verba per adversarium praemissae nostrae sententiae praedicata, quae etiam sub avaritiae subtili furo deprehendimus palliata, reprobamus & tanquam erronea & haeretica declaramus. Quorum demens tenor cum reprobo sensu sic sequitur, catholica damnatione fulminandus. Decimae personales (this was the doctrine of*

¹ Ex archivis arch. Cant. haust v. c. Arch. Dock LL.D. in vita Th. Chicheley Cant. archiepisc. pag. 71.
Oxon. in bibloth. Bodleiana.

² In taciturnitas.

³ Ex archivis

friar *Ruffel* non cadunt sub præcepto divino, saltem ut solvantur parochiali curato; quare licet vestrum unicuique, nisi consuetudo in contrarium fuerit, in pios usus pauperum eas dispensare. Et iterum. Personales decimæ sub divino non cadunt præcepto neque jure debentur, ubi solutionis non est consuetudo. But they thus damn it. Quisunque hanc sententiam tenuerit, & pertinaciter defenderit apud reputationem nostram hæreticus est censendus, & quia a sana doctrina ecclesiæ est divisus, a corpore ejusdem ecclesiæ, velut membrum putridum, est præscindendus. O honorabiles fratres & domini! O universitates catholicæ, & quicunque fideles! scrutamini scripturas, canones inspicite, ac eorum naturales concipite rationes. Quam proditorum est tributum negare altissimi? Quam inhumanum a laborantibus abstrahere debitum? Quam grave schismatis exemplum auctoritati ecclesiæ publicæ & pertinaciter resistere? Ac etiam justitiæ obviam contra præcepta canonum res alienas invadere? Nimis cruenta ac sacrilega ac hæc avaritia quæ antiquissimi juris decimale debitum solum consuetudini ascribit, & in dubium revocat ut laborantium vitium juste exhauiat. Quod miscitis ecclesiæ ad eorum honestam sustentationem firmum persisteret, si decimæ possunt ad libitum conferri & jus decimandi ex debito non esset? O utinam aut respiciant & ad ecclesiæ gregium redeant, qui tanto facinori favere conantur; aut asperimis censuris, ne simplices inficiant, mordaciter sentiantur. Sic unanimis in vera doctrina ecclesiæ permaneamus ut ad eum tendere valeamus, de quo canit propheta, quærite Dominum & confirmamini, quærite faciem ejus semper. Sic lætetur cor quærentium Dominum hic in via, quatenus ipsum quærentibus dignetur esse merces in patria. Amen. They were, methinks, somewhat vehement and very confident in the point. Neither have I elsewhere seen so great authority against *Ruffel*. If *Ruffel* was therefore an heretic, doubtless he hath had, and now hath many, fellow hereticks. For thus, many, nay the most of such as most curiously inquire herein, and divers canonists also that are for the moral right of predial and mixed tythes, deny that personal are otherwise due regularly than as custom, or law positive, which is subject to custom, directs. But judge you of it, reader. I only relate it, and return to their prosecution against *Ruffel*. At length news came, that he was at Rome, whither presently the convocation sent agents (to whom they allowed for an honorary salary, a farthing out of every pound of church livings) that might there question him before the bishop of Rome. A delegation of the cognizance of the cause was made to a cardinal, who adjudged him to perpetual imprisonment unless he recanted. The friar afterward broke prison and ran home again, where at *Paul's* cross (when nothing else could satisfy the secular part of the clergy) he solemnly abjured his heresy, as they called it;

and to prevent the like in the doctrine of other minorites, *Chicheley*, the archbishop, enjoined them all, that in their public sermons they should teach personal tythes to be due by the laws of God and the church. Of later time, others have written for the divine right and general duty of tythes. You may see *Albericus Pius Carpenfis* against *Erasmus*, *Baronius*^m his digression touching them, others; but especially the divers treatises written to that purpose of late by our countrymen, which are read in every hand. I purposely abstain from particular mention of their names. But neither have only single authors been lately of that side for predial and mixed; whole synods also of this age have in express words been for them, through whose authority and this antienter before remembered they might have fortified their conclusions with far greater names, than by citing some one or two late single men, as they usually do. To omit the council of *Mentz* held in the year M.D.XLIX, where it is delivered that decimæ debentur jure divino (and some other are to that purpose in the decreta ecclesiæ Gallicanæ, collected by *Bochell*) in "an edict of Henry the second of France in M.D.XLII, relation is of a remonstrance made to him by the bishop, dean, canons, chapter, and clergy of *Paris*; wherein they take it clear, that tythes and first fruits were introduites & insituees de droit divin & partant deussent estre payees loyauement & sans fraude. The like, of the clergy of the diocese of *Troyes*, is mentioned in an edict of *Charles* the ninth, in M.D.LXII, in the same words. And in the year before, by a general synod of all the clergy of France at *Poissy*, a complaint was made with that pretence in it. The words of the edict best shew it, *Charles, &c. a tous ceux qui ces presentes lettres verront, salut. De la part de nos chers & bien amies consilliers les archevesques & evesques de nostre royaume & des deputez des clergez, qui ont este aggregez assemblez a Poissy par nostre commandement, nous a este remonstré, que combien que les dixmes & primices, qui sont leur principal revenu, soient introduites & insituees de droit divin, & partant deussent estre payees loyauement & sans fraude: ce neantmoins plusieurs agricultores, proprietaries, &c. With these may be reckoned, that of the clergy's petition in the^o parliament of 50 Ed. III. wherein they begin with licet decima silvæ, presertim caeduae, de jure divino & ecclesiastico Deo & ecclesiæ sit solvenda, &c.*

VI. But although by this opinion and that of the canonists, tythes be generally due by the divine law, and so not subject (if with them you take it for the divine moral or natural law) to civil exceptions, as customs and prescriptions, of discharges or of payment of less, or such more, whence also real compositions have been condemned, & quia decimæ cum temporalibus non sunt commutandæ, as the words of an old pope

^m Ad annum Christi 71.

ⁿ Edictes & ordonnances de France tom. 4. lit. 22.

^o Rot. parl. 50 Ed. III. art. 199.

^p Append. ad concil. Lateran. part. 4. cap. 1.

were to the bishop of *Cusa*; yet the practised common law (for by that name, as common is distinguished from sacred, are the civil or municipal laws of all nations to be filed) hath never given way herein to the canons, but hath allowed customs, and made them subject to all civil titles, infeodations, discharges, compositions, and the like. Of compositions no more shall be spoken, seeing they consist rather in individuals, than of any general course, we only remember them here as one kind of discharge, among other that have been allowed by common laws. And where customs, and infeodations hold, no man can doubt of the lawfulness of compositions. But for customs; In the edicts made by those kings of *France* upon those remonstiances, it appears, that whatever the clergy supposed by their *dixmes introduites insituees de droit divin*, they complain of abuse only in due payment of tythes out of lands *sujets & redevables aux dix dixmes*, &c. that is subject and liable to the payment of tythes. Neither in other words do the edicts and their verifications give them remedy. And notwithstanding that it were once, according to sundry canons of that church, thus commanded by an old law of the year *M CC. XXXVIII.* made by *S. Lewis*, *decimæ quibus suis longo tempore ecclesia per malitiam inhabitantium defraudata, statuimus & ordinamus quod restituatur citius, & amplius laici decimas non detineant, sed eas habere clericis permittant*; Yet, in that state, against the whole course of the canon law in this kind, they have, what by reason of ancient infeodations still continuing, what through customs, allowed divers lands to be not at all subject to any tythes payable to the church. For their infeodations (although none can be there new created) such as were made before that canon *prohibemus* of the council of *Lateran*, held under *Alexander III.* are to ' this day remaining, and are conveyed and descend as other lay inheritances; excepting only such, as being discharged of feudal service, have been given into the church. For, their lawyers with the common opinion, but erroneously, suppose that all such infeodations came from the church; and therefore they agree if any feudal tythes be conveyed into the church ' freely by themselves (not as annexed to other fees, as castles, or manors, nor subject to tenures reserved) that then they are in the church, as it were *jure possiminii*, or, as we say, *by way of remitter*; that is, they are so annexed, that they may not be transferred again into lay hands, more than any other tythes which are the ancient revenue of the church; whence it hath been adjudged also in the parliament of *Paris* in the case of the bishop of *Baieux*, that tythes so conveyed are not ' subject to the custom of *droit de retrait lignager*, that is, the right of the heir apparent's redeeming an inheritance sold by his ancestor within a year and a day, or some such certain

time. But this point of remitter, they ground not so much upon the nature of the tythes, as upon an old law of *S. Lewis*, wherein liberty is given that all persons *decimas percipientes in nostra terra, & in feudis moventibus mediate vel immediate de nobis quas clerici percipient, si eas laici non perciperent, possint eas relinquere, dare & alias quocunque justo titulo, & licito modo ecclesiis concedere tenendas imperpetuum, nostro vel nostrorum successorum assensu minime requisito, &c.* Whereas, by the way, some of their lawyers ^a say, that feudal tythes there purchased by clergymen, are at this day subject to the *droit de nouveaux acquêts*, i. e. a kind of fines for alienation, which I could not yet learn how it well stands with this of *S. Lewis*. But they commonly interpret it as an ordinance to this end, that when the church (the parish ² church only to which they are supposed to have been due) had gotten them free by sale or gift or otherwise, they should be perpetually annexed to it; And were it not for this ordinance, which interpretation hath thus applied, their lawyers ought to have enquired more carefully about the original of every infeodation; For, where it began from a layman, there, what cause is of remitter? And these kind of feudal tythes also of their own nature are mere lay possessions, and determinable in that kingdom, only before the secular judge; As it appears, not only in an old ordinance of *Philip le Beau*, touching the jurisdiction of tythes, and in the protocolle or register of the chancery of *France*, but also in a late arrest of the parliament of *Paris*; where a curate sued before an official for his *canonica portio* (which hath been there sometimes adjudged the fourth part, but is arbitrarily determined) against some other churchman that enjoyed the tythes of the parish, who pleaded to the jurisdiction, that the tythes were feudal, and desired that he would not hold plea of what so much belonged to the king's court; but the official first gave sentence that the defendant should bring in his proofs of the tythes being feudal; which failing, he proceeded to the point of the action. Thereupon by *appel comme d'abus* it came into the parliament of *Paris*, which after solemn argument gave ³ judgment that the official had usurped over the royal jurisdiction, in that he had at all proceeded after the simple allegation of infeodation, which alone binds the hands of the ecclesiastical judge that hath no more power to enquire of the infeodation or of tythes as feudal, than of any other lay inheritance. And in the same case, reference is made to some other judgments of like nature; and the reason given in the arrest is mainly, because tythes of their own nature, and originally are not otherwise spiritual, or belonging to a spiritual court, than only as they were annexed to a church or some other hallowed place. *La raison est*, are the words, *que suivant la doctrine de S. Thomas*,

^a Edicts & ordonnances tom. 4. pag. 493.

prediales, §. 11.

^b Vide Carol. Mullin. in consuet. Paris. des fiefs, §. 68. pag. 1266. & Esq. & Berrand d'Argente in consuet. Britan. artic. 266. pag. 1114.

^c Lucius Paris. placit. curiae lib. 2. tit. 5. §. 2.

^d Baquet des droits de do-

maine tract. 4. par. 3. chap. 30.

^e Code des decim. lib. 1.

^f Code des decim. lib. 1.

^g Carbin en les lois de la France arret 66.

^h Et code des decim. lib. 1. tit. 10. decim. 17. & voyez Papon en

noaire vol. 2. liv. 8. fol. 551.

^a Videtur Gudonem PP. decim. 188. & consuet. Bituricenf. tit. 10. de cullisue

prediales, §. 11.

^b Vide Carol. Mullin. in consuet. Paris. des fiefs, §. 68. pag. 1266. & Esq. & Berrand d'Argente in consuet. Britan. artic. 266. pag. 1114.

^c Lucius Paris. placit. curiae lib. 2. tit. 5. §. 2.

^d Baquet des droits de do-

maine tract. 4. par. 3. chap. 30.

^e Code des decim. lib. 1.

^f Code des decim. lib. 1.

^g Carbin en les lois de la France arret 66.

^h Et code des decim. lib. 1. tit. 10. decim. 17. & voyez Papon en

nous tenons qu'en la loy de grace, les dixmes sont deues non de droit divin, mais positif; & l'Eglise en naissant n'a este faitte dame de ce droit, ains par le don & concession des rois, princes, & autres a qui de droit il appartenoit. Whence, if they were annexed to any church, they were of ecclesiastical jurisdiction that was given antiently for them; but being as feudal inheritance, although they once were in the church, yet a new character of being mere lay is restored to them. Those^a infeodations of tythes are there very frequent, and in very many parishes the tythes are taken only by laymen. But for them, so much. Customs in payment and non payment of the tenth, have ever held in that church, which might alone be proved out of some passages in *Gerfon*, and in *Jobannes Major*, who tells us, that *plurimi in Italia & Francia de multis rebus quotam non dant*. But it may more fully be manifested by edicts of late time. In one of *Charles IX.* and another of *Henry III.* *Dixmes se leveront selon la custome de lieux & la coite accoustumee in iceux. Et on la dit custome ferra obscure & incertaine, ferra servir celle des lieux circumvoisins.* The French customs (according to divers usages of their provinces) are frequent for paying a less part than the tenth, and clearly allowed^c by divers judgments. Neither is the canon law, which allows not customs, suffered to be there practised. And for customs of paying none or de non decimando; in some cases they hold there also; and that by force of that *lex famigerata*, as *Du^d Molin* calls it, their *Philippine*, which is an ordinance made by *Philip le Beau* in m.cccc.iv. (but it is falsely and diversly referred to other of their *Philips*) commanding that no new exaction should be made of tythes not accustomed to be paid. *Senescallus*, it says, *ad requisitionem consulum locorum quoruncumque, descendat ipsos consules & universitates & singulos a nova impositione servitutis facienda per praelatos & alias personas ecclesiasticas, & a nova exactione decimarum & primitiarum & prestationis passatae, prout de jure fuerit & hactenus est consuetum fieri.* By this authority, whereas in the parish^e of *Brantel*, in the diocess of *Meaux*, the prior and convent de *nostrre dame de Varrari* purchased certain land that had formerly paid tythe-corn to the rector, and made fish ponds in it, the rector afterward was barred in his action for tythe of the fish; and one reason was upon this *Philippine*, because no such tythe had been used to be paid. So in *Auvergne*, in *Berry*, and other provinces, some customs of^f non payment hold good. And oft-times the king there sends commands grounded upon this *Philippine*, that new tythes not usually paid should not be exacted by the clergy. *Literae*, saith^g my author, *dictum conceduntur in cancel-*

laria regia super novis decimis, ne a laicis exigantur per eorum praelatos, quae fundantur in ordinatione Philippi pulchri Francorum regis facta die Veneris aute cineres, anno m.cccc.iv. cap. xxix. hujus tenoris, Item quod Senescallus, &c. And expressly the customs of^h *Berry.* Item par la custome, dixme est doibt paier seulement des choses d'out est accoustume payer dixme, &c. where *Boerius* says, he hath seen it accordingly for other places often adjudged at *Paris*. And in an edict of 10 *Hen. IV.* of *France* touching the payment of tythes by those of the reformed religion, the payment is commanded only, *selon l'usage & custome des lieux*, and accordingly divers arrests of parliament also have been. And although sometimes customs have been there disallowed, especially de non decimando; yet that hath proceeded chiefly from the usurpation of the canons, where the secular law was wrongfully neglected; as you may see in the example of that of the ecclesiastical court atⁱ *Rhose*, wherein the laity were compelled ad reddendas decimas de feno & aliquibus aliis de quibus apud eos inconfutatum erat reddere decimas, as *Major's* words are, who concludes, that had the judge been other than a canonist, he would not so have adjudged it.

VII. In *Spain* also some infeodated tythes from ancient time are in lay hands, which the clergy about mccc.lxxx. would have had into their revenue, under *John I.* of *Castile* and *Lions*; but could not. And in an ordinance of the same *John*, against all such as should usurp the^m right of tythes, a proviso is, that it should not extend to such tythes or church revenue, as the crown or any subject had from ancient time enjoyed. And a third part of tythes due to the king, is mentioned in theirⁿ laws, as granted to him from the pope, of which, at his pleasure, new infeodations are made. And *Petrus^o de Lorca* remembers, that the pope *regibus Hispaniae concessit tertiam partem decimarum & aliis secularibus absque consensu singularum ecclesiarum*. Among these you may reckon those tythes in the crown, which by grant from the pope, king *Ferdinand* and queen *Isabel* had in the kingdom of *Granada*, in consideration of their endowment of churches there; and of them and their jurisdiction, whereto they are subject, thus^p *Covarruvias* an excellent lawyer of *Spain*. *Semel*, says he, *ex literis regis vidi decimarum causam tractari inter ecclesiasticos apud Granatensem praetorium, ex eo quod reges catholici Ferdinandus & Elizabeth decimas hujus regni Granatensis obtinuerint a pontifice maximo cum onere dandandi ecclesiis*. That is, the judges held plea of them by commission from the king, not by spiritual power, which otherwise regularly hath cognizance of

^a Bertrand d'Argente in conf. Brit. art. 266. des appropriations, pag. 1111.

^b Guidoneo papar. decim. 174. Code des decim. lib. 1. tit. 10. decim. 7.

^c Romae.

^d Code des decim. lib. 1. tit. 17. decim. 9.

^e Carol. de Grassio regal. Franc. lib. 2. juve 7.

^f tom. 1. liv. 2. pag. 221. in 1.

^g chronico Joh. 1. r. Castellae. & vide Petr. Belluzum in spec. lit. de decimis.

^h Recopilacion por Philip II. lib. 1. tit. 1. & Gregorio Lopez in parida 1. tit. 20. leg. 22.

ⁱ Thom. disput. 42. memb. 1. num. 16.

^j Pract. quesi. cap. 35.

^k Ad sent. 3. dist. 37. quesi. 36.

^l Ad edit. Hen. II. contra datas paru. & abus. curiae

^m Et restatur ex iis Covarruvias lib. 1. var. resolut. cap. 17.

ⁿ Tit. 10. des coutumes preiales. §. 12.

^o P. Marth. hist.

^p P. Marth. ad Guid. pap. decim. 228. ex

^q Ordennances reles de Castella lib. 1. tit. 1. ley

^r In 2. 2.

tythes; although another great lawyer ^a of that country deny that the cognizance of such tythes lawfully belongs to any other jurisdiction than spiritual. Neither hath the canon law been so powerful there, as to make tythes payable against customs, for payment either of a less part, or none. And however in an ordinance of the year m.c.c.xciv, *Alonso* ¹ the ninth, published his *mandamos y establecemos por sempre, que todos los hombres del nuestro regno den sus diezmos derechamente y cumplidamente a nuestro senor Dios de pan y de vino y ganados y de todas las otras cosas que deven dar derechamente segun manda sancta yglesia*, wherein he seems to establish, that whole tythes without any diminution should be always paid to the church, of corn, wine, and cattle, and all other things, (which ordinance also is exemplified and confirmed by *John* the second of *Castile*, and *Ferdinand* and *Isabel*; and accordingly, *Alphonso Diaz de Montalvo* his gloss on it, makes it to be consonant wholly to the canon law) and the whole course of their ancient body of the law, in their *partidas*, be agreeable with it; yet the practice in that state hath been and is, that if suit be commenced in the spiritual court for new tythes, formerly not accustomed to be wholly or not at all paid, and such custom or prescription be pleaded, and the official or ordinary allow it not, upon complaint to the king's court, the defendant shall, as in case of prohibitions in *England*, have his remedy. This is declared by ² their *Concarrurias*. *Erit*, saith he, *observandum, causam decimarum quandoque in his regnis* (that is, *France* and *Spain*) *trahari apud regios auditores; nempe cum laici contendunt decimas ab eis exigi, quae legitima temporis praescriptione* (which is usually thought should be immemorial, and so is their ³ practice; although the most common time in other things be *xl* years) *minime debentur, & sunt remissae; denique conqueruntur contra morem & consuetudinem decimas ab eis exigi; nam etsi condemnentur a iudice ecclesiastico, nihilominus, ex quaerela, causa, retinetur apud regia praetoria. Siquidem & literae regiae passim dantur a supremo senatu ad id ut laici non cogantur decimas illas solvere, quae solvi legitima temporis praescriptione non consueverunt*. And with him agrees *Alonso de Azevedo*, that writes upon their *ordenanças reales*. But these kind of their prohibitions are grounded upon their ordinances, forbidding decimas a laicis exigi, quae per consuetudinem contrariam non consueverunt solvi, as *Concarrurias* says; And to that purpose was an edict ⁴ of their *Charles* the first (emperor the fifth) at *Toledo* in m.d.xxy, and another like of his at *Madrid* about three years after, and before four years were thence past, at *Segovia*, and another at *Villadolid*.

And upon these oftentimes, says *Alonso de Azevedo*, writs of prohibition go out to the ecclesiastical judges, that proceed *super novitate*, to forbid that *similes non permittant novitates, & processum causae regio ipsi senatui originaliter mittant*. Which agrees with the very words of the ordinances ⁵, that speak of *novedades* in exaction of tythes against custom. And one special use is there, that the kings give their personal ⁶ tythes to their own chaplains attending on them.

VIII. Neither hath the canon law wrought otherwise in *Italy*, but that there also particular customs, as well of non decimando, as in the *modus*, are frequent. *Multis Italiae locis*, says ⁷ *Cajetan*, *contingit ex consuetudine*, that nothing at all is paid. And so is the practice there, for the most ⁸ part, at this day; the parish priests being sufficiently maintained by manse and glebe, and the revenues that are in some places paid, as according to a *modus*. And of the *Italians* and others, where like customs were, *Aguinas* thus; ⁹ *Haud laudabiliter ministri ecclesiae decimas ecclesiae requirunt, ubi sine scandalo requiri non possint propter consuetudinem vel propter aliquam aliam causam*. In *Venice*, says ¹⁰ *Panormitan*, *non in visa sed in morte solvuntur decimae personales de omnibus mercantiis jocalibus & aliis mobilibus*. And in the whole signiory of *Venice*, as my ¹¹ author delivers, no parish church hath through that name *decimas seu jus decimandi*, but only another stipend or *quartessum*, as they call it, de possessionibus seu terris consistentibus intra confines eorum curae. Neither have infeodations of tythes into lay hands been less known in *Italy*, than elsewhere. For example, you may see the ¹² case of the *Mutii*, a noble family of *Piacenza*, who had by immemorial prescription and confirmation by bulls, an ancient infeodation of all tythes growing in the territory of *Verrano*, within the diocese of *Piacenza*.

By the ¹³ ordinance of *Frederick* the second, about m.c.c.xx, in the kingdoms of *Naples* and *Sicily*, a command is, that of all profits belonging to the crown of those kingdoms, a whole tenth should be paid, and that every subject should truly pay all such tenths as had been used to be paid in the time of *William* king of *Sicily*. *Subiectis*, are the words, *nostris indicimus, ut decimas quas de fendis & bonis suis antecessores eorum praedicti regis Guilielmi tempore praescriperunt, venerabilibus locis, quibus decimae ipsae debentur, cum integritate persolvant*.

In *Germany*, the canonists note a custom, that ¹⁴ *pro decimis solvunt certae mensuras sive coloni aliquid recolligant, sive non*. And this by their law they allow, because it stands indif-

^a Gregorio Lopez ad partida 3. tit. 4. leg. 17.

por mandado de los d. c. Fernando & Isabel.

tit. 1. l. 4. ^c Covarr. var. resol. lib. 1. c. 17.

Partida 1. tit. 20. leg. 12. & del Lopez.

^d Bullat. of the religion ^e in the 20th parti, §. 39.

summae part. 4. tit. 11. cap. de decimis.

num. 11. edit. J. Baptista Caesaris.

^f tit. 7.

^g tit. 7.

^h tit. 7.

ⁱ tit. 7.

^j tit. 7.

^k tit. 7.

^l tit. 7.

^m tit. 7.

ⁿ tit. 7.

^o tit. 7.

^p tit. 7.

^q tit. 7.

^a Faero real d' Espanna lib. 1. tit. 4. y en pragmáticas y leyes recopiladas

por mandado de los d. c. Fernando & Isabel.

^b Practic. quest. 31.

^c Recopilacion de las leyes por mandado de Phil. II. lib. 1. tit. 1. l. 6.

^d Ad 1. 2. q. 17. art. 1. sic & Joh. Major ad j. sent. 37. dist. 36. quest.

^e Vide, si placeat, Henric. Bowtie, ad extr. de dec. c. preventi. Et Antonius.

^f Ad c. in aliquibus tit. de decimis.

^g Francisc. Monaldus in part. 1. consil. 46.

^h Maria Anguissola edit. dist. part. 1. consil. 49, 50, &c.

ⁱ Consil. Sicul. lib. 1.

^j Consil. Sicul. lib. 1.

^k Consil. Sicul. lib. 1.

^l Consil. Sicul. lib. 1.

^m Consil. Sicul. lib. 1.

ⁿ Consil. Sicul. lib. 1.

^o Consil. Sicul. lib. 1.

^p Consil. Sicul. lib. 1.

^q Consil. Sicul. lib. 1.

^r Consil. Sicul. lib. 1.

ferent, whether the church lose by it, or no; but also, some laymen take tythes of new improvements by right of their lordships. *Status imperii secularis*, lays a^b judge of the imperial chamber, *decimas novarum percipere jure territorii possunt*. Which the clergy complained against, in a diet at Norimberg, but in vain. And of those tythes, infeodations are there made, at the pleasure of the owners, into lay hands. Which was so in practice there also anciently, as is witnessed by an old^c canonist, that lived above ccc.lx years since; where disputing the question, *utrum laicus possit sine peccato decimas percipere?* and bringing the ordinary authority for the negative part, he tells us, both for Germany and other countries, in these words, *In contrarium potest induci generalis consuetudo in Hispania & Francia & Burgundia & Alemannia in plerisque locis*. And in the county of Flanders an edict was^d made by Charles V. dated at Malines in mccc.xx. which commanded, that no clergy or layman pretending right to tythes, should exact or sue for other *nouvelles dismes antres qu'ilz & leur predecesseurs ont accoustume prendre & avoir passe quarante ans & au dessus*: but that they should rest content with what was due only, according to the former use of payment, saving in case of new improvements, and such like, as it was explained by another edict some ten years after: both together are the same almost as our statute of 2 Ed. VI. And in the general council of Lateran of m.cc.xv. a relation is of some nations, who although christians, yet *secundum suos ritus decimas de more non solvunt*; and, that other men leased their land to them, because in regard of no tythe being paid by them, the greater rent might be reserved; against which, remedy is there provided. The words are, *in aliquibus regionibus quaedam permixtae sunt gentes quae secundum suos ritus decimas de more non solvunt, quamvis sentiantur nomine christiano, &c.* Whereupon Innocent the fourth, that might well know the meaning of the council living so near it, notes that the christians, who by their own customs did not pay, were Greeks, Armenians, and the like. And^e Antoninus expressly remembers the general non-payment of them in the eastern church, as a thing not to be censured to be against God's law. Neither indeed have I met with any canon law of all that church that ever commanded any thing touching tythes.

Among the laws of Hungary, we find; *decimas non solvunt nobiles de propriis terris, et decimas non solvunt Rasciani, Rutheni, Valachi, et decimas non solvunt iudices propter laborem eorum circa faciendum*: although for other persons generally they have strict laws for payment of them.

In the statutes of Poland, it appears that^a about m.ccc.lxx. under king Cazimir the second, the clergy, especially for the diocese of

Cracow, made divers laws, with his consent, upon great differences about the paying of tythes. One in especial is, that tythe must be paid of all that increases through the labour of the plough, *exceptis rapis, papaveris, caulibus, cepis, allio, & quae his sunt similia in hortis*; and *si quis lignosando plantaverit, decima ab eo nullatenus exigatur*. Some other particulars they have about paying tythe of hemp and flax (which happens sometime to be more, sometime less than a tenth; because the certainty is only from the number of beasts used to the plough) and of other things: whence it appears, that the use of tything there is not consonant to the canon law. And Theodore Zwake delivers it for a law of this country, that *decimae ex terris vastatis accipi non debent*, which I think is to be referred to a thirty years liberty of non-payment given especially by Bodantza bishop of Cracow, to such as were tenants of lands lately wasted by the Lithuanians and Tartars; which is declared in the law, remaining at large in the collections of Herborn and Prilussus, whither for more particulars I refer you.

In the laws of Swedeland and Gothland, the text^b is, *decimae separentur & rependantur in agro, quarum tertiam partem suscipiat presbyter, & de reliquis duabus partibus capiat ecclesia tertiam partem*. Which I understand so, that the parson is to have all, saving a third part out of the two parts, which were to be employed on maintenance of the church.

In Scotland, by a^c law of David the second about m.ccc.xi., it was constituted that no man should hinder the clergy in disposing tythes: *Sic quod suis decimis possint pacifice & cum integritate gaudere, sub poena excommunicationis, quoad clrum, & decem librarum penes regem*. And tythes there, have been, and in many places^d are paid, parochially, yet also granted, altered, and disposed of by^e positive law as in other countries. In the late plantation of new churches ordained by the last parliament^f there, manse and glebe and vittle are assigned for maintenance to the rectors, but not tythes. And after the statute of annexation in the eleventh parliament of our present sovereign, whereby church revenues (saving parochial tythes, manse and small glebe, and some other special possession) were refused to the crown, an act was made in the parliament^g following against a kind of infeodations, which they call *cessions of temporalities and teinds of kirkland into temporal lordships*, saving such as had been before erected. And for the particular course of setting out payment of tythes some special laws of late time they have in Scotland, and in the other states before spoken of; but they belong not so much hither, being not of the essential part of the practice of payment, nor of the received right of tythes, therefore I wholly omit them. One example of an appropriation in

^a Thomas Michael in lib. de jurid. conclus. 49.

^b Hist. in sum. tit. de dec. ann. 12.

^c Ordonnancien in Vlaenderen bouck, 3. rubric. 32.

^d Summa part. 4. tit. 11.

^e In eberhard. aric. decret. regi Hungar. a Sambuco edita.

^f J. Herborn. in stat. Poloniae lib. D. & Jacob. Prilussus leg. Polon. lib. 1. cap. 4.

^g Reginald. incrementi de iure ecclesiastico, lib. 1. cap. 7.

^h Statut. David. 11. cap. 42. m. 3.

ⁱ Vide par. 22 Jac. VI. ad. 9.

^j Vide par. 2 Jacob. VI. & 11 quid. cap. 29.

^k Par. 22 Jacob. VI. ad. 1.

^l Par. 12 Jacob. VI. cap. 119.

Scotland may be here not untimely added, which falls about the year M.C.C.XC. and shews a kind of arbitrary disposition, even at that time, of parochial tythes of lands lying there, in a conveyance of a layman's made to the monastery of Gisleburn in *Yorkshire*. The grantor was that Robert de Bruis, afterward king, and one of the ancestors of our sovereign. The original thus speaks. * *Omnibus ad quos præfens scriptum pervenerit, Robertus filius Roberti de Brus dominus vallis Anandiac salutem in Domino sempiternam. Noverit universitas vestra me concessisse, & præfenti scripto confirmasse Deo & ecclesiae sanctae Mariae de Gisleburn & canonicis ibidem Deo servientibus & servituriis, ecclesiam de Anand cum terris, decimis, & possessionibus ad eam pertinentibus, & ecclesiam de Logmaban cum terris decimis & possessionibus ad eam pertinentibus, & ecclesiam de Kirkpatrick cum capella de Logan & omnibus suis pertinentiis, & ecclesiam de Rainpatrick, & ecclesiam de Cumbartres, & ecclesiam de Gretenhowe cum omnibus pertinentiis earum; Tenendum & habendum Deo & præfatis canonicis, & eorum successoribus, libere quiete & honorifice, ita quod liceat eis perpetuis temporibus de decimis prædictarum villarum, libere disponere & ordinare pro voluntate sua, & cuicunque voluerint eas ad firmam dimittere dare vel vendere, & alio quocunque modo voluerint, & ubicunque voluerint commodum suum facere, sine impedimento mei & haereditum meorum & hominum nostrorum, &c.* The seal, in green wax, annexed to it, hath impression of a knight armed and mounted, as for present onset in the wars, and is circumscribed with *esto ferox ut leo*.

How the laws of *Ireland* stand for tythes, is best seen in the statutes of that country of 28 *Hen. VIII.* cap. 17. of dissolutions, and 33 *Hen. VIII.* cap. 12. of payment according to ancient custom and recovery of tythes, after the dissolution, given into lay hands, in like manner as in *England*. And here may be no unfit place to remember that ancient law ordained by *Henry III.* within the archbishoprick of *Dublin*, whereby it was commanded that every man non expellato mandato regis vel assensu, de gurgitibus & piscariis, ecclesiis in quarum parochiis sunt prædicti gurgites vel piscariae, decimas solvant. Quia R. non vult in periculum animae suae, hujusmodi decimas detineant. We purposely omit particular mention of such of the reformed churches, as in this last age have brought their ministry to stipends, and altered almost all the former practice of ecclesiastick policy. For the practice of payment, and other disposition of tythes, and for the laws, and opinions, touching the right of them, thus much. But whatever this kingdom of *England* might have specially afforded, for laws and practice of tything, shall by it self, in its own singular order, be next delivered.

C H A P. VIII.

The laws of *England* made in the Saxon mycel rymoter or rittenagemoter, in parliament, and in the councils here held, either national or provincial, or by the pope, for the due payment or discharge of tythes in this kingdom. Petitions, or bills in parliament touching them, are inserted. All in their course of time.

MOST of the *English* laws, constitutions and bills in parliament, that are referred to this place and here collected, were originally written in *Saxon*, *Latin*, or *French*. And the *Saxon*, for the most part, were antiently (but it seems since the *Norman* conquest) turned into a barbarous *Latin* that yet better shews their meaning than a purer. Such as are found in *Latin* only, I have faithfully delivered according to the copies that gave them. Neither durst I suspect that any reader fit for the matter, should need an interpreter, no otherwise have I done in what is of the old *French*; it can hardly be any thing but inexcusable sloth, that can trouble any reader (that is fit also for the matter) in the understanding it. But in regard the old *Saxon* is known at all to few, and that hardly any better interpretation of the laws written in that language, can be than the old barbarous *Latin*, I have joined always, where it might be, both the *Saxon* and the translation. To have left out the original, had prevented some freedom of the reader's judgment, and tied it to the translator's. To have added no translation, had been as a purpose to have troubled even the fittest readers with a strange tongue; which also to have otherwise interpreted, had been but to envy them the help of those antients (that had better means to know the interpretation of those laws) and so make them look only as through spectacles of mine new made. I was willing to give all (as the course of the collection would permit) that herein might help to make a ground of free judgment. Yet also where I see cause of note I add it, but refer all to able censure. The laws and constitutions thus succeed.

I. An antient * collection of divers canons written about the time of *Hen. I.* with this inscription of equal age:

Incipiunt excerptiones domini Ecgberti archiepiscopi Eburac civitatis, de jure sacerdotali, habet hese words: Ut unusquisque sacerdos cunctos sibi pertinentes erudiat ut sciant qualiter decimas totius facultatis ecclesiis divinis debite offerant. And immediately follows: Ut ipsi sacerdotes a populo suscipiant decimas; & nomina eorum,

* Servatur autographum in thesauro Canoniano. Cottoniana.

* Rot. pat. 14. Hen. III. membr. 4.

* MC in biblioth.

quicumque dederint, scripta habeant, & secundum autoritatem canonicam coram tellibus dividant, & ad ornamentum ecclesiae^c primam elegant partem, secundum autem ad usum pauperum atque peregrinorum per eorum manus misericorditer cum omni humilitate dispendent; tertiam vero sibi met ipsis sacerdotes reservent.

If the credit of this be valued by the inscription, then it is about DCCC.L. years old. For, that *Ecbert* lived archbishop of *York* from the year DCCCLIII. to DCC.LXVII. But the authority of that title must undergo censure. Whoever made it, supposed, that *Ecbert* gathered that law and the rest joined with it, out of some former church constitutions, neither doth the name *exceptions* denote otherwise. But in that collection some whole constitutions occur in the same syllables as they are in the capitularies of *Charles* the great, as that of *uniquae ecclesiae unus mansue integer, &c.* and some others which could not be known to *Ecbert*, that died in the last year of *Pipin*, father to *Charles*. How came he then by that? And how may we believe that *Ecbert* was the author of any part of those exceptions? Unless you excuse it with that use of the middle times, which often inserted into one body, and under one name, laws of different ages. But admit that, yet what is *secundum canonicam autoritatem coram tellibus dividant*? The antientest *canonica autoritas*, for dividing tythes before witnesses, is an old imperial, attributed in some editions^c to the xi. year of the reign of *Charles* the great, being king of *France*, in others^d to the emperor *Lothar* I. But refer it to either of them, and it will be divers years later than *Ecbert's* death. And other mixed passages there plainly shew, that whose soever the collection was, much of it was taken out of the imperial capitularies, none of which were made in *Ecbert's* time. Perhaps, the greatness of his name was the cause why some laier compiler of those exceptions might so inscribe it, to gain it authority. For he was both brother to *Edbert* king of *Northumberland*, and the first also that, after *Paulinus*, restored the name of archbishoprick, and the pall, to *York*. And the heads of a synod held in *Ecbert's* time, under king *Ethelbald*, and *Cuthbert*, archbishop of *Canterbury*, are yet extant; but not any express mention is found in them of tythes, although most of the particulars of church government are touched there.

II. The authors of the centuries^e have a synod held in the year D.CC.LXXXVI. under two legates sent from pope *Adrian* I. with letters for reformation and establishing of church laws, to *Offa* king of *Mercland*, and *Aelfwold* king of *Northumberland*, and to the two archbishops. The particulars of the synod are related in an epistle to the pope from those legates (which were the first that had so come from *Rome* hither, after

Augustine) wherein it is related, that *Gregory*, bishop of *Offia*, one of the legates, went into *Northumberland*, and *Theophilact*, bishop of *Todi*, the other, to *Offa*, who with *Kennulph* king of *West-Saxony*, called a council for the southern part, as *Aelfwold* for the northern. *Gregory* says, that in the northern parts *ad diem concilii convenerunt omnes principes regionis tam ecclesiastici quam seculares*; and after many institutions of canon laws there, the xvth chapter is,

De decimis dandis sicut in lege scriptum est: Decimam partem ex omnibus frugibus tuis seipmitis deferres in Domum Domini dei tui; rursum per prophetam: Adverte, inquit, omnem decimam in horreum meum, ut sit cibus in domo mea, & probate me super hoc, si non aperueris vobis cataractas coeli & effuderis benedictionem usque ad abundantiam, & increpabo pro vobis devorantem qui comedit & corruptum fructum terrae vestrae, & non erit ultra vinea sterilis in agro dicit Dominus. Sicut sapiens ait: Nemo iustam elemosynam de his quae possidet facere valet, nisi prius separaverit Domino quod a primordio ipse sibi reddere delegavit. Ac per hoc plerumque contigit ut qui decimam non tribuit ad decimam revertitur. Unde etiam cum obtestatione praecipimus, ut omnes student de omnibus quae possident decimas dare; quia speciale donum Dei est; & de novem partibus sibi vivat & elemosynas tribuat. Et magis eas in abscondito facere suavis, quia scriptum est: cum facis elemosynam, noli tuba canere ante te. The authority of this canon, may be known out of *was* is there further added. Haec decreta, beatissime papa *Hadriane*, in concilio publico coram rege *Aelfwoldo* & archiepiscopo *Eanbaldo* & omnibus episcopis & abbatibus regionis seu senatoribus ducibus & populo terrae proposuimus; & illi ut superius fatus sumus, cum omni devotione mentis iuxta possibilitatem virium suarum, adjuvante superna clementia, se in omnibus custodire devoverunt, & signo sanctae crucis in vice vestra, in manu nostra confirmaverunt, & postea stylo diligenti in charta hujus paginae exaraverunt, signum sanctae crucis insignentes. Then follow some subscriptions of bishops, Et his quoque saluberrimis admonitionibus, presbyteri, diaconi ecclesiarum, & abbaes monasteriorum, iudices, optimates, & nobiles uno opere, uno ore consensimus & subscripsimus.

After this so concluded in the northern state, the same legate, together with *Malvin* and *Pyttell*, ambassadors from *Aelfwold*, take with them all those decrees and canons, and go to the council held under *Offa* for the western parts,

Ubi, as the words are, gloriosus rex *Offa* cum senatoribus terrae una cum archiepiscopo *Iaenbercto* (some call him *Lambert*) sanctae ecclesiae *Dorovernenfis* (that is, of *Canterbury*) & caeteris episcopis regionum convenerat, & in conspectu concilii clara voce singula capita

^a Vide super. cap. 6. §. 3.
bard. lib. 3. tit. 8.

^b Ansegis. lib. 1. cap. 91.
^c Centur. 8. cap. p. 32. §. 3. edit. Basil. 1567.

^e Edit. Viti Amerbachii, cap. 7.

^d Leg. Longo-

perfecta sunt, & tam Latine quam Teutonice (that is, in English Saxon, which then was the self same with Dutch or Teutonic) quo omnes intelligere possent, dilucide referata sint: qui omnes consona voce & alacri animo gratias referentes apostolatus vestri admonitionibus (the legates so write to the pope) promiserunt se divino adminiculante favore juxta qualitatem virium pro mitissima voluntate in omnibus hæc statuta custodire.

And *Offa* and his bishops, abbots, and some princes subscribe with the croses to it. What copy of this synod the centuriators had, or whence they took it, I find not. But if it be of good authority, it is a most observable law to this purpose; being made with such solemnity by both powers of both states, of *Mercland* and *Northumberland*, which took up a very great part of *England*; and it is likely, that it was made general to all *England*. In the relation of the legates to the pope, mention is of *Kenulph* king of *West Saxony*, his joining with *Offa* in calling the council; but the confirmations of the decrees have no reference to him. But, by the way, if you examine it by story and synchronism, *Kenulph* perhaps could not have at all to do with it. For some of our old monks expressly affirm, that in the second year¹ of *Brithric*, next successor after *Kenulph*'s death, pope *Adrian* sent his legates in *Britanniam* ad renovandam fidem quam prædicaverat *Augustinus*. And that they then held their synod at a place called *Cealchirbe*. How could *Kenulph* be there then, as the legates relate? Believe the monks as you will: but indeed, an exactness here is not easily extracted out of the disturbed times of our chronicles. They talk also of a synod held in *Wicanhale* for the north parts, a year or two after. Doubtless they intend this same that is extant in the centuries; if at least it be of sufficient credit. Neither can it be suspected by any circumstance in the subscriptions; which being so many, might have by chance soon got among them a character of falsehood, had it not been genuine. In the printed *Hoveden*, *Gregory*, one of the legates, is called *Georgius*, perhaps for *Gregorius*. But my ms. hath also *Georgius*. But if *Henry of Huntingdon*, and *Roger of Hoveden* give us the time right of the legates coming hither, then is that mention of *Kenulph*, in their supposed epistle to the pope, a plain character of falsehood, or ignorance, in some transcriber; who also, in one place, hath *Osvaldus* for *Ælfwaldus* king of *Northumberland*. But those which speak of that synod of these legates, seem to suppose it extending through the whole kingdom. See also §. VIII.

III. In the² laws made between king *Alfred* and *Guthrun* the Dane, (to whom the provinces of *East-Anglia* and *Northumberland* were

given to hold of the crown) and renewed also between the same *Guthrun* and king *Edward*, son to *Alfred*, about the year D.CCCC. this occurs, Gif hja teofunge poþhols, gylke lahlite mō Denum, fīre mib Englum, that is, as the old *Latin* translation hath it, si quis decimam contrahentem, reddat lahlite cum Dacis, witam cum Anglis. *Laahlite* denotes the *Danish* common forfeiture; which, as it is thought, was in most offences twelve ores (that was commonly twenty shillings, for twenty pence made an ore commonly; and sometime, according to the variation of the standard,³ sixteen pence was an ore; but in *Oxfordshire*, specially, and *Glocestershire* in *Domesday*, twenty go to an ore) as the *English* common forfeiture, or the *wite*, was thirty shillings. The occurrence of these two names, is frequent in the *Saxon* laws; and it may seem by this, that some other law preceded for the payment of tythes, or else that the right of them was otherwise supposed clear. For the authority of this and the rest comprehended in those of *Alfred* and *Guthrun*, observe that in their title; 7 ƿa ƿican eac ƿe ƿyþan færon, oƿe 7 anselean ƿ ƿealƿ genyþeod 7 mib goce gehyþton, that is, and the wifemen (or the baronage) of succeeding times, very often renewed that council of theirs, and in *bonum adduxerunt*, as in the old translation those last words are turned.

IV. It is reported of king *Æthelwulf*, that in the year D.CCC.IV. decumavit (as *Æthelwulf* writes) de omni possessione sua in partem Domini & in univ[er]s[um] regimine sui principatus sic constituit. The words of his charter, whereby he did it, are; Cum consilio episcoporum ac principum meorum consilium salubre atque uniforme remedium (he means remedy against those miseries which the *English* had endured by *Danish* irruptions) affirmantes consensimus, ut aliquam portionem terrarum hæreditariam antea possidentibus omnibus gradibus sive famulis & famulabus Dei Deo servientibus, sive laicis miseris, semper decimam⁴ mansionem ubi minimum sit, cum decima partem omnium bonorum in libertatem perpetuam donari sanctæ ecclesiæ adjudicavi, ut sit tuta & munita ab omnibus secularibus servitutibus, &c. So is it reported in the abbot of *Crowland*'s history, and varies not much in *William of Malmesbury*, and *Nicholas*⁵ of *Gloucester*, who both have it also at large. But in *Matthew of Westminster*, no other *decima* is mentioned in it, than *decima terræ meæ*. Out of the corrupted language, it is hard to collect what the exact meaning of it was. How most of the antients understand it, is best known by the words wherein they sum it. *Ingulphus* thus of it; Omnium, prælatorum ac principum suorum qui sub ipso, variis provinciis totius Angliæ præerant, gratuito consensu tunc primo cum decimis omnium terrarum ac bonorum aliorum sive castallorum

¹ *Henry of Huntingdon*, lib. 4. pag. 197. & *Rog. de Hoved.* p. 337. edit. Londini, sed vide etiam *Rog. de Hoveden*, sub ann. 756. & *Æthelwulf*, lib. 1. cap. 20. & *Flor. Wigorn.* sub ann. 751.

² Vide *fred.* *Edouard.* & *Guthruni* edit. *Lamhard.* cap. 6.

regit. *Burton.* apud *Camden.* in *Belg.* pag. 186. edit. lit.

³ i. hydam, seu familiam.

⁴ Mf. in biblioth. Cottonian.

universam dotavit ecclesiam Anglicanam per suum regium chirographum. And he tells us further, that *Aethelulph*, in the presence of his baronage, at *Winchester*, offered the charter upon the altar, and the bishops received it, and sent it to be published in every parish church through their dioceses. In *Florence of Worcester*, it is in these words abbreviated. *Aethelulphus rex decimam totius regni sui partem ab omni regali servitio & tributo liberavit, & in sempiterno graphio in cruce Christi pro redemptione animae suae & antecessorum suorum uni & trino Deo immolavit.* So also *Roger of Hoveden*. An old *French* fragment of the *English* history says, that he *dismast la dixme lide de tute Westsaxe*, and that it was *pur pesse & vestre les pources*. The old archdeacon of *Huntingdon* thus; *Totam terram suam ad opus ecclesiarum decumavit propter amorem Dei & redemptionem sui.* And in the rhymes of^m *Robert of Gloucester*,

The king to holpe chyrche thesaute: ever the
more dough.
And tithed well all his lond, as he ought, well
enough.

If we well consider the words of the chiefest of these antients, that is, *Ingulphus*, we may conjecture that the purpose of the charter was to make a general grant of tithes payable freely and discharged from all kind of exactions used in that time, according as the monk of *Malmesbury*, andⁿ *John Pike* in his supplement of the history of *England*, express it. *Decimam*, say they, *omnium hydarum infra regnum suum a tributis & exactionibus regis liberam Deo donavit*, that is, granted the tythe of the profits of all lands, free from all exactions; for, the granting of the tenth part of the hides or plough-lands, denotes the tenth of all profits, growing in them, as well as *decima acra sicut aratrum peragrabit*, which is used for tything of the profits, in the laws of king *Edgar*, *Ethelred*, and *Knout*, and accordingly also is this of *Aethelulph*, related in the *Saxon*^o chronicles of *Peterborough*, *Canterbury*, and *Abingdon*. He did tythe his lance; of eppall his pice goe to lofe, &c. as the words are, that is, *his lands over all his kingdom*, &c. And doubtless *Ingulphus* no otherwise understood it than of perpetual right of tithes given to the church, where he remembers it by *tunc primo cum decimis*, &c. So that the tythe of predial or mixed profits was given, it seems, perpetually by the king with consent of his states both secular and ecclesiastick, and the tythe of every man's personal possessions were at that time also expressly included in the gift, because, it seems, before that, the payment of all tithes had commonly been omitted. The antientest of writers that hath the charter whole, is that *Ingulphus*: But questionless it is much corrupted, especially in that of *portionem*

terrarum hereditariam antea possidentibus omnibus gradibus. For what may that signify? But in *Matthew of Westminster*, it is farthest from depravation of language; where, after *portionem*, follows *terrae meae Deo & beatae Mariae & omnibus sanctis jure perpetuo possidendam concedam, decimam scilicet partem terrae meae ut sit tuta, &c.* The privilege or liberty annexed to it, is, that it should not be only free from all taxes and exactions used then in the state, but also from that^p *trinoda necessitas* (whereto all lands whatsoever were subject, although otherwise of most free tenure) by which they meant their *expeditio* or military service, *pontis extractio*, & *arcis munitio*. This freedom of that time, you must, it seems, so interpret, that every man was from henceforth to be valued in all subsidies and taxes according only to his nine parts of his lands and profits; and the profits of the tenth being due to the church, were both in his and their hands hereby discharged from all payments and taxes whatsoever. But should it be understood only for a particular consecration to the church of one time, and of the land^q it self to be possessed by the clergy or employed to other good uses of charity, then had it no more due place here among the laws of tithes, than the story^r of *Robert earl of Gloucester* his giving every tenth stone (of his provision for the building of a tower near to *Bristol*) to the erecting of a chapel, or *Edward*¹ the confessor his building *Westminster* abbey with the tenth of one year's revenue, or *Offa*'s giving the tythe of his estate to the clergy and the poor, or the like. But I conceive it as is before declared. It is fit to add here also another of *Aethelulph*'s grants or constitutions by the parliamentary consent of that time, made to like purpose; and that at large, because it is not in any published author. In the^s *charularies* of the abbey of *Abingdon*, it occurs in the one, with the title of *privilegium Aethelwulfi Regis*, in the other with, *quomodo Aethelwulfus rex dedit decimam partem regni sui ecclesis*. Then follows the charter or constitution. *Ego Aethelulf gratia Dei occidentalium Saxonum rex, in sancta ac celeberrima Paschali solennitate, pro meae remedio animae, & regni posteritate & populi ab omnipotenti Deo mihi collati, consilium salubre cum episcopis, comitibus, & cunctis optimatibus meis perfecti, ut decimam partem terrarum pro regnum nostrum non solum ecclesiis dorem, verum etiam & minimis nostris in eadem constitutis in perpetuum libertatem habere concessimus, ita ut talis donatio fixa incommutabilique permaneat ab omni regali servitio & omnium secularium servitute absoluta. Placuit autem Aethelstano episcopo Scirburnensis ecclesiae & Switbunolfentanae ecclesiae episcopo, & ducibus committere. Hoc autem fecimus in honorem Domini nostri Ihesu Christi & beatae semper virginis Mariae & omnium sanctorum & Paschalis festi reverentiam, ut Deus omnipotens*

¹ MC. ad calcem Nich. Glocest. in bibl. Cotton. lieth. Cottoniana.

ⁿ Mts. in bibl. Cottoniana.

^o Mts. in bibl. Cottoniana.

^p Polydoc. Virgil. hist. Angl. lib. 4.

^q Mts. in bibl. Cotton.

^r In bibl. Cotton. & apud v. c. Tho. Allen. Oxon.

^s Vide, si placet, tit. honor. part. 2. col. 746, 747.

^t Camden, in Belgii, fo. 173.

^u Idem, pag. 205. in Trinobantibus.

^v Mts. in bibl.

^w See interl. 3

nobis & nostris posteris propitiari dignetur. Scripta est autem haec cartula anno ab incarnatione domini nostri Ihesu Christi DCCC.LIV. indictione 11 die Paschali, in palatio nostro qui dicitur Wiltun. Qui autem augere voluerit nostram donationem, augeat omnipotens Deus dies ejus prosperos: si quis vero minuire vel mutare praesumpserit, noscat se ante tribunal Christi redditurum rationem nisi prius satisfactione emendaverit. Ego Aethelwulf rex. Ego Aethelstan episcopus. Ego Swi-thun episcopus. Ego Wlstan abbas. Ego Werferd abbas. Ego Etheberd & ego Alfred filii regis consensimus. The antientest hand wherein this is written in the chartularies, is of about Henry the second his time; and for the credit of it, you must rely upon those chartularies. It differs in date both of place and time from the other; this is dated at *Wilton*, that at *Winchester*; this in DCCC.LIV. the second indiction at *Easter*, that DCCC.LV. and in some, the fourth indiction, and in others, the third in *November*; Such a difference of indictions may well be, if the authors that deliver it, added that note for the time that they conceived it to be made in, not for the very characters of the date of the original instrument; For, *November* falling in the fourth indiction imperial, may be of the third indiction pontifical, the one beginning in *September*, the other in *December* following. That difference is in the relations of it between *Florilegus* and the abbot of *Crowland*; and the abbot perhaps reckoned by the pontifical indictions, and the other monk by the imperial, if at least their copies be not corrupted. But whereas in *Malmesbury* the date of that first charter is DCCC.XLV. indict. IV. v. nonas *Novembris*; plainly it is false, neither could that indiction be in the character of the year DCCC.XLV. which fell in the seventh indiction.

V. In a volume * that belonged to the abbey of *S. Augustine's* in *Canterbury*, titled *statuta synoderum*, written in a hand of about DCCC years after *Christ*, or somewhat more, one paragraph is *de decimis*. But the *Mosaic* commandment (for few of the judicials of *Moses* are wanting in it) and a passage in *S. Augustine* are the only authorities brought for them. No council or positive canon is mentioned in it to that purpose; although for other things, *synodus Romana*, *synodus Arelensis*, *Narbonensis*, and very often *synodus Hybernensis* occur in it. The authors used by him that compiled it, are *S. Augustin*, *S. Jerom*, *S. Gregory*, and *Isidore*, (which were in those middle times the chief, almost the only fathers of the church that were read) and sometimes *Gildas* and *S. Patrick*, whence it may seem that it was collected by some *Briton* or *Irishman*, and certain canons of that abbot *Adoman* spoken of by *Bede*, are annexed to it. Neither did the author of it doubt but that he had all the councils of credit that prece-

ded him, as his own testimony in his preface justifies. There, after a short relation of the four most known and generally received, of *Nice*, of *Constantinople*, of *Ephesus*, of *Chalcedon*, he adds: *Hae sunt quatuor synodi principales fidei doctrinam plenissime praedicantes; sed & si qua sunt concilia quae sancti patres spiritu & divino pleni sanxerunt post istarum quatuor auctoritatem, omni manent stabilia vigore, quorum gesta in hoc opere condita tenentur.* But to the same volume is joined another collection, with this inscription; *incipiunt pauca judicia quae desunt de supradictis*, in which the old canons of *Rome* (that is, the *codex Romanae ecclesiae*, or some other in the nature of it, which was received into these northern parts, as a director of the church, in the eldest times of christianity here, as you may see in our antientest church-story) are cited, and divers authorities out of those fathers and a few of the elder councils. But, no denominated pontifical or synodal is remembered there for tythes. Only the texts of *Moses* for tythes, first fruits, the first born, and such more are numbered together; and then follows a chapter *de divisione decimarum*, with this declaration: *Lex dicit; ipsi sacerdotes populi suscipiant decimas, & nomina eorum, quicquid dederint, scripta habeant & secundum auctoritatem canonicam &c.* in the self same words as are before attributed to the exceptions of *Ecberst*. The exact age of those *statuta synoderum*, appears not. But they were collected about king *Aethelstan's* time; at least, then was the copy that remains of them written, as may be conjectured alone, if other reasons failed, from the similitude betwixt the character found in them and that of the text of the holy evangelists, which king *Aethelstan* caused to be fairly written, and consecrated to *S. Catbert*. That text with those *statuta*, are both yet preserved from the injury of time, among those inestimable monuments of that noble knight *Sir Robert Cotton*. For those *pauca judicia* that follow; they are of later hand than the *statuta*; but of what time, it sufficiently appears not. That *lex dicit* in them may be referred to the canon ^b related out of the exceptions of *Ecberst*; but whence that canon is originally, I have not yet learned.

VI. King *Aethelstan* ^c about the year DCCCXXX by advice and consent of the bishops of the land, made a general law for predial and mixed tythes; in these words, Ic fæstlanc cýning mid geþeahce wulfhelmes mīnes heahþeofer. 7 oþra mīnra bircopa beboote eallum mīnum geþearfum 8uph ealle mīne rice (on þær bpihtæne nāma. 7 ealpa halgena, 7 fep mīne lufu) 8 h aepst mīnes agenes aether 8am teoþe geýyll. 7e 8æf libbenber 8ýpfer. 7e 8æf geaplice fepstæf; 4 7 8 ilce gedo eac 8a bircopas heopa gefhulpa. 7 eac mīne ealþoþmanna. 7 geþeafa; 7 ic wille 8 mīne bircopas 7 geþeafa 8æf

* Ms. in biblioth. Cottoniana, cap. 65. de variis causis.

† Ecl. hist. lib. 4. cap. 16.

‡ Provisi eandem librum canonum, ait Theodorus Can. arch. in concil. circa ann. 670. apud Hertford celebrato. Bed. hist. eccles. lib. 4. cap. 4.

§ Sup. §. 1.

¶ Leg. Aethelst. edit. a Lambardo.

¶ In ms. Cottoniano inferuntur illic haec verba: 7pa man nuxteart mæge. oððe gemetan, oððe getellan, oððe paegan.

i. e. in the nearest way that may be; either by measure, number, or weight.

demas eallum ðe his gehyrnuman gebýp. 7 þæt alce to þam tide fulþremþ; ðe þe his feccþ; 7 þe se to ðæm bæc; 7 æp beþeþ; bunter ðeant lohanneþ hæp fullteper; which is antiently thus * turned into *Latin*. *Ego Athelstanus rex consilio Wulfhelmes archiepiscopi mei & aliorum episcoporum meorum, mando praepositis meis omnibus in toto regno meo, & praecepto (in nomine Domini & sanctorum omnium & super amicitiam meam) ut in primis de meo proprio reddant Deo decimas tam in vivente capiali quam mortuis frugibus terrae: & episcopi mei similiter faciant de suo proprio, & aldermanni mei, & praepositi mei. Et volo ut episcopi & praepositi mei, hoc judicent omnibus qui eis parere debent, & hoc ad terminum expleant quem eis ponimus, i. e. decollatio S. Johannis Baptistae.* And the example of *Jacob*, with a text or two out of holy writ and *S. Augustin*, is added to move devotion. That translation agrees wholly enough with the *Saxon*, saving in those words *mortuis frugibus*; the *Saxon* being yearly fruits, which also another copy of this translation expresses by *ornotinis frugibus*, corrupted plainly from *hornotinis frugibus*, i. e. the fruits of one and the last year, or the yearly increase; and perhaps some ignorant monk finding *ornotinis*, and not understanding it, because he would be sure to square it to his own ability of learning, made it *mortuis*, which kind of changing hath examples enough in bold but ignorant criticism. That which the old translator calls *vivens capitale*, is, libbeter typer i. e. *living cattel*, in the *Saxon*; which hath often a ceap also for *charrels*, and sometimes especially for *living cattel*; but the old *Latin* of the *Saxon* laws turns ceap also into *capitale*, whence *cattalla* is like enough to have descended. And the first flock of cattel which by king *Ina*'s *h* laws was to be given to orphans, was called *franc* in *Saxon*, but *primum capitale* in the old translations. In *Brampton*'s history (which is full of the laws of the *Saxon* times) after those constitutions of *Grateley*, part of which are in *Lambard*'s *Agglossaria*, follows a thankful acknowledgment to king *Aethelstan* for this law of tythes, in these words: *Karissime; episcopi tui de Kent & omnis Kentrae, thayni, comites & villani tibi domino dulcissimo suo gratias agunt, quod nobis de pace nostra praecepere voluisti, & de commodo nostro perquirere & consilare; quia magnum opus est inde nobis divitiis & egenis. Et hoc incepimus, quanta diligentia potuimus, consilio bonorum sapientum quos ad nos misisti. Vnde, karissime domine, primum est de nostra decima, ad quam valde cupidi sumus & voluntarii & tibi supplices gratias agimus admonitionis tuae.*

spiritual men (which are expressed by *godcunþa* and *poplcunþa*) held in *London*, made this *act*. *Tecunþe þe beþeþ; ælcum episcopum men be hy episcenome, 7 cyrcsceat, 7 ælmesfeoh; 7, 7if hit hpa bon nýlle, 7y he amanfumb.* Which is antiently *turned*; *deciman praecepimus omni christiano super christianitatem suam dare; & emendat cyrclicatum, i. e. ecclesiae censum, & ælmesfeoh, i. e. elemosinae pecuniam, signis hoc dare noluerit, excommunicatus sit.* And all agrees with the *Saxon*, saving only, that nothing answers to the word *emendat*. That *cyrcsceat* is a church-rent of corn, or the first fruits of corn yearly in those times, and regularly payable at *S. Martin*'s day to the church; and is sometimes written *curefæt*; sometimes otherwile. And in an old ms. exposition of law-terms, occurs, *cherche-funde, une mesure de ble que checun homme soleit envoier a seint eglise en temps de Bretons*. Plainly, church-corn is understood; and *cyrcsceat*, that is, church-rent is the original whence *cherche-funde* is there corrupted. And among articles *inquirable* by every clericator in 44 Hen. III. about the profits, estate, tenure, and illuses of the king's tenants, one is of *cherche-fet tam in blado quam in gallinis, & in aliis exitibus*. It is *curefæt* often in the book of *domesday*. Where it is found belonging sometimes to abbies, sometimes to parish churches, sometimes to others. It was still as first fruits. And this old testimony is for the antiquity and continuance also of payment of it here. *Cherche-fet certam mensuram bladi tritici significat quam quilibet olim sanctae ecclesiae die sancti Martini tempore tam Britonum quam Anglorum: Plures tamen magnates post Normannorum adventum in Angliam illam contributionem, secundum veterem legem Moysi, nomine primitiarum dabant, prout in brevi regis Knuti ad summum pontificem transmissa continetur, in quibus illam contributionem appellat churchfed, quia semen ecclesiae.* But what the author means by that letter or brief of king *Knout*, sent to the pope, I as little know, as why he cites that for authority to prove what the baronage did after the *Normans*. Indeed, an epistle *is* extant, which *Knout* sent into *England* (by *Living abbot of Tavistock*) as he was taking his journey homewards from the pope; and therein, mention is of this *cure-fet*, of any other I am yet ignorant. That *ælmefeoþ*, or *almf-money*, was the *Peter-pence*, due yearly at the first of *August*, by institution, as some will, of king *Ina*, as others, of king *Aethelwulf*. And they were called also *Romefeoh*, *Romefæt*, *heof-pe-mg*.

VII. ABOUT D.CCCC.XI., *Edmund* king of *England* in miscene synods, that is, a great synod, or council, a kind of parliament, both of lay and

VIII. Of the same time, some constitutions are extant, made by *Odo* archbishop of *Canterbury* (yet not, for ought appears by them, in a synod) with this preface: *Ego Oda humilis*

* In historia Jorhallensi ms. in bibl. Cotton.

dicta historia Jorhallensi, ms.

† In d. h. Jorhallensi, ms.

‡ In d. h. Jorhallensi, ms.

§ In d. h. Jorhallensi, ms.

|| In d. h. Jorhallensi, ms.

¶ In d. h. Jorhallensi, ms.

‡ In d. h. Jorhallensi, ms.

§ In d. h. Jorhallensi, ms.

|| In d. h. Jorhallensi, ms.

¶ In d. h. Jorhallensi, ms.

‡ In d. h. Jorhallensi, ms.

§ In d. h. Jorhallensi, ms.

|| In d. h. Jorhallensi, ms.

¶ In d. h. Jorhallensi, ms.

‡ In d. h. Jorhallensi, ms.

§ In d. h. Jorhallensi, ms.

|| In d. h. Jorhallensi, ms.

¶ In d. h. Jorhallensi, ms.

* Vet. leg. ibid. ms.

† Dict. hist. Jorhallensi.

‡ Vet. leg. ibid. ms.

§ Vet. leg. ibid. ms.

|| Vet. leg. ibid. ms.

¶ Vet. leg. ibid. ms.

‡ Vet. leg. ibid. ms.

§ Vet. leg. ibid. ms.

|| Vet. leg. ibid. ms.

¶ Vet. leg. ibid. ms.

‡ Vet. leg. ibid. ms.

§ Vet. leg. ibid. ms.

|| Vet. leg. ibid. ms.

¶ Vet. leg. ibid. ms.

‡ Vet. leg. ibid. ms.

§ Vet. leg. ibid. ms.

|| Vet. leg. ibid. ms.

¶ Vet. leg. ibid. ms.

‡ Vet. leg. ibid. ms.

† In leg. cap. 37. 40. & 41.

‡ Leg. Edmund. apud Lambard. cap. 2.

§ Leg. Edmund. apud Lambard. cap. 2.

|| Leg. Edmund. apud Lambard. cap. 2.

¶ Leg. Edmund. apud Lambard. cap. 2.

‡ Leg. Edmund. apud Lambard. cap. 2.

§ Leg. Edmund. apud Lambard. cap. 2.

|| Leg. Edmund. apud Lambard. cap. 2.

¶ Leg. Edmund. apud Lambard. cap. 2.

‡ Leg. Edmund. apud Lambard. cap. 2.

§ Leg. Edmund. apud Lambard. cap. 2.

|| Leg. Edmund. apud Lambard. cap. 2.

¶ Leg. Edmund. apud Lambard. cap. 2.

‡ Leg. Edmund. apud Lambard. cap. 2.

§ Leg. Edmund. apud Lambard. cap. 2.

|| Leg. Edmund. apud Lambard. cap. 2.

¶ Leg. Edmund. apud Lambard. cap. 2.

‡ Leg. Edmund. apud Lambard. cap. 2.

& extremus divina largiente clementia, almi
præfulis & pallii honore ditatus, quædam do-
cumenta omni christifida non indigna, quæ a
præcedentibus illustrium virorum præceptis
certissima comperi, ad consolationem domini
mei regis scilicet Aetmundi omnique populi
excellenti imperio ejus subiecti, in ista cartula,
codunare decrevi. Unde devotissime obsecro
& clementissime hortor audientium mentes
ut si quando hæc recitanda audiant, in-
terius videlicet & in corde frequenti me-
ditatione plantent, & multiplici bonæ ope-
rationis munere ex eo fructum pacatissimum in
tempore messis sibi colligant. Primo capitulo
præcipimus & mandamus ut sancta Dei eccle-
sia, &c. And so goes on with some particulars
which belong to church discipline; the tenth
and last chapter being only for tythes in these
words. *X. capitulo mandamus & fideliter ob-
secramus de decimis dandis sicut in lege scrip-
tum est. Decimam partem ex omnibus frugibus
tuis seu primitiis decimas in domum domini
Dei tui. Rursum propheta, asserit, inquit,
omnem decimam in horreum meum, ut sit cibus
in domo mea, & probate me super hoc si non
aperuero vobis cataractas coeli & effundero be-
nedictionem usque ad abundantiam & increpabo
pro vobis qui comedit & corruptit fructum
terre vestrae; & non erit ultra vinea sterilis.
Unde & cum obtestatione præcipimus ut omnes
studeant de omnibus quæ possident dare deci-
mas; quia speciale domini Dei est; & de no-
vem partibus sibi vivant & elemosinas tri-
buant. Where note, the syllables are of that
which in the centuries is referred to an English
council of D.C.C.LXXXVI. before in §. II. For this
of *Odo*, although no express occurrence denote,
that it was in a council; yet you may much
incline to believe it was in one, if you compare
it with what you find in the monk of *Malmes-*
bury of him.*

IX. King *Edgar*, about the year D.CCCC.LXX.
mis his prena geþeahce, that is, with the advice and
council of his wisemen, or baronage, ordained,
That the church should enjoy all her liberties,
þæt man ægýre ylce ælc deoþunge to þæm ealban mýn-
stere ðe seo hýmstere tohyrfe, 7 sylþonne 7pa geleaf-
æges of ðæges inlands. ge of neatlans. 7pa his
ruli gega;

2. 7up hpa ðonne ðegna ry. ðe on his boclande
cýpcan habbe ðe legeþstope on ry. gerylle he ðonne
þneðan ðæl his ægenpe deoþunge into his cýpcan;

3. 7up hpa cýpcan habbe ðe lægesstope on ne ry.
ðonne to he of ðæm nýgan bacum his sþeort þæt
he pille;

4. And ry æcþe geoguþe deoþunge gelaft be Pen-
tecoften; 7 þæpa eorþþætma be Eamhte.

5. 7up hpa ðonne þa deoþunge geleastan nelle 7pa
þe ge-craþen habbaþ. þape ðæs cýmnges geþeþa to.

* Malach. 3. * De gest. pontif. lib. 1. fol. 174. a.

in ms. * Apud Brampton in hist. Iornal. fol. 54. in biblioth. Cottoniana.

* Vide infra §. ix. & x.

* Vide §. xii. & xvii.

* Saxonicum in usu erat, narratur.

7 þær Býscoper. 7 þæt mýnstres mæsseþeort. 7
niman unþances ðope deoþen ðæl to ðæm mýnstre
ðe hit to geþýpge. 7 æacan him to þæm nýgþon
ðæl, 7 to ðæle mon þa eahta ðæls on tpa. 7 þo se
hl-þops to healfan. to healfan se býscop. ry hit
cýmnges man. ry hit ðe gener: that is, in the old
Latin copies.

1. Et reddatur omnis decimatio ad matrem
ecclesiam cui parochia adjacet, de terra thai-
norum & villanorum, sicut aratrum pera-
grabit.

2. Si quis thainorum sit qui in feodo sua ec-
clesiam habeat ubi coemiterium sit, det ei ter-
tiam partem decimarum suarum.

3. Si non sit ibi atrium (but the Saxon hath
here the same word as before, for coemiterium,
that is, lægesstope) det, ex suis novem partibus,
presbytero, quod vult.

4. Et omnis decimatio juventutis reddita sit
ad Pentecosten; & terræ frugum, ad acqui-
noctium.

5. Si quis decimam dare sicut diximus no-
luerit, adeat præpositus regis & episcopi, &
sacerdos illius ecclesiae, & reddant ecclesiae cui
pertinet decimam suam; & nonam partem
dimittant ei qui decimam suam detinuit, & octo
partes in duo dividantur dimidium domino,
dimidium episcopo; sit homo regis, sit homo tha-
ini. This Latin agrees well enough with the
Saxon; although in this last §. si quis, for epif-
copi & sacerdos, Lambard hath & episcopus &
sacerdos illius ecclesiae, &c. But whereas the
translator uses the word ecclesiae only for
church; in the Saxon, that which he calls ma-
trem ecclesiam, is denoted by ealban mýnstre,
and that ecclesia, in §. 2. si quis thainorum, by
cýpcan; whence, our word kirk, or church, is
framed. For the difference of church and
minster here, somewhat where anon we speak
of parishes of that time.

X. A council, or a kind of parliament, held
under king *Ethelred*, by the advice of his two
archbishops, *Elfsþeg* and *Wulstan*, (about the
year M.X.) is yet extant, wherein laws are for
tythes. But because it remains only a manuscript
of about the time of the *Norman* conquest,
the preface of it shall be here first noted, that thence
the authority of it may be the better understood.
It is inscribed with *Incipiunt synodalia decreta*.
Then begins with,

Quodam tempore contigit ut regis *Aethelre-*
di edicto concerpante, archipraefulumque *Alfe-*
gi & *Wulstani* hortatu infligante, universi An-
glorum optimates die sancto Pentecostes ad lo-
cum ab indigenis *Eanham* nominatum acciti
sunt convenire. Collecto itaque ibidem christi-
colarum coetu venerabilium quamplurimorum de
catholica cultu religionis recuperando, deque

* Leg. Edgar, cap. 1. 2. & 3. apud Lamb.

* i. baronum cu labore tenentium

* ms. in biblioth. Cottoniana: in volumine quo ordo coronationis qui

etiam rei statu publicae reparando vel consulendo plura & non pauca upote divinitus inspirati ratiocinando fermocinabantur. *Then follows some constitutions about monks, abbots, canons, and other of the clergy. After which, the council goes on with,* Post haec igitur archipontifices predicti convocata plebis multitudine collectae, regis edicto suprascripti omniumque consensu catholicorum omnibus communiter praedicabant unum Deum colendum esse debere, patrem videret, &c. *And divers canons succeed; and among them occurs,* Nec ecclesiae antiquitus constitutae decimis vel aliis possessionibus priventur ita ut novis oratoriis tribuantur; *Which very words are found in an elder council of Mentz, and in the imperial capitularies. Then immediately follows,* Decimationes frugum & vitulorum & agnorum, nec non & aratrales elemosynae, ecclesiasticaeque munera domino per singulos annos temporibus rependantur congruis. Elemosynae videlicet aratrales quindecim diebus post pascha peractis; vituli quoque & agnuli decimales erga Pentecosten, frugum vero terrae decimationes circa omnium sollicitatem sanctorum ecclesiarum perfolvantur opportunis.

To it, is joined the most part of it^e in *Saxon*: but that preface is wholly therein wanting, neither doth any thing in the *Saxon* answer to that, *nec ecclesiae antiquitus constitutae, &c.* But those tythes are there reckoned among *göber geystlic*, that is, *things due unto God.* And the *Saxon* text for them is; *geogöbe teo unge be ferecesten.* *geopð þæt ma be ealra halgenamæstjan, that is, the tythe of young cattle is to be paid at Whitsonside, and of fruits of the earth at Albalows,* and according to this, in an old *Saxon* ⁱ collection of christian duty, *aēc man* (says the author) *te ðung, ge æste mid þiht, that is, let every man pay his tythes justly.* Those aratrales elemosynae were called *fulhaelmeestjan*, that is, *plough-alms*; which was a penny to be paid of every plough-land; and the ecclesiastica munera were only the first fruits of corn paid at *S. Martin's* day; whereof before §. VIII.

XI. In some laws of king *Ethelred*, remaining in abbot *Brampton* his history, we read.

^e Omnis Thainus decimet quicquid habet, and, Praecipimus ut omnis homo super dilectionem Dei & omnium sanctorum det cyricsecatum & rectam decimam suam sicut in diebus antecessorum nostrorum fecit quando melius fecit, hoc est, sicut aratum peragrabat, decimam acram, & omnis consuetudo reddatur super amicitiam Dei ad matrem nostram ecclesiam cui adjacet, & nemo auferat Deo quod ad Deum pertinet, & praedecessores nostri concesserunt.

The inscription of those laws amongst which there are found, is, *haec insituerunt Ethelre-*

duſ & sapientes ejus apud Habam. By this, and that of *Edgar* before cited, it appears that the tythe of every tenth acre according to the order of tithing the whole farm, was to be paid to the church. Which also is made more plain in the next law of king *Knout*.

XII. Gelæste man (are the words of ^h one of king *Knout's* laws made about M.XX.) *Göber geþhta æghple geape nighelice geopne, þæt is fulhaelmeeste fyste nist ofer Eaptran.* *Ƴ geogöbe teoþunge be Pentecosten.* *Ƴ eoþ þæt ma be ealra halgena mæstjan, Ƴ Ƴif þra þonne þa teoþunge geæstean naelle.* *Ƴ Ƴa geceþan habbaþ.* *Ƴ Ƴe teoþa acceþ. eal Ƴa Ƴe fulh hit geogöþonne þaþe to þær Lýnnger geþeþ.* *Ƴ þar byceþaþ, Ƴ þær laob þeic, Ƴ þær mýnstes mæstseþeoce.* *Ƴ man unþanceþ þonne teoþan ðæl to þam mýnstre þe hit to geþýrge.* *Ƴ tæcan lum to þam nýgöþum ðæl; Ƴ to ðæle man þe ichta ðælar on tpa.* *Ƴ Ƴe Ƴe laobþeoþ to healfum, Ƴ to healfum Ƴe byceþ, rý hit Lýnnger man. rý hit ðegener; this is ⁱ antiently thus turned.*

Reddantur Deo debitæ rectitudines annis singulis, hoc est elemosyna carucarum xv. diebus post Pascha, decimae de novellis gregibus in Pentecosten, terrenorum fructuum in festo omnium sanctorum. Si quis hanc decimam dare nolit sicut omnium nostrum commune est institutum, hoc est decimam acram sicut aratum peragrabat, eat praepositus regis & episcopi & domini ipsius terrae cum sacerdote & ingratis auferant & ecclesiae cui pertinebit reddant. Nonam vero partem relinquat ei qui decimam dare nolit. Octavas partes reliquias in duo dividant, & sit una medietas episcopi, alia terrae domini, sive sit homo regis sive thaini.

With this *Latin*, the *Saxon* agrees: and it is almost but a repetition of king *Edgar's* law for tythes, and those two paragraphs in king *Edgar's*, the one touching a conveyance of a third part of the tythes to a church that had right of sepulture, the other concerning a church that wanted that right, are also repeated (as many other laws of the former ages) in those of king *Knouts*; which are called *leges* ⁱ *Anglicae* generally in the antientest *Latin* copies that I have seen.

XIII. The copy of the laws of *Edward* the confessor, that bears this title; *leges boni regis Edwardi quas Guilielmus bastardus postea confirmavit*, hath this ⁱ for tythes.

De omni annona, decima garba Deo debita est & ideo reddenda. Et si quis gregem equarum habuerit, pullum reddat decimum. Qui unam vel duas habuerit, de singulis pullis singulos denarios. Similiter qui vaccae plures habuerit, decimum vitulum. Qui unam vel duas, de vitulis singulis obolos singulos. Et qui caseum fecerit, det Deo decimum: si vero non

^e Exemplar item Saxonum reperitur in codice vettustis. legum Sax. in fasciis laudata bibliotheca.

in bibl. Coronata.

^f Hist. Jorrollent. ibid. fol. 61.

^g b. m. bibl. Coron. sed opusculum harum legum exemplar extat in bibliotheca serenissimi principis.

^h In biblioth. d. serenissimi principis.

147. b.

ⁱ Leg. Casuti, cap. 1.

ⁱ Mf. inter leg. Saxonice.

^j In historia Jorrollentis fol.

Magone Brit. ad D. Jacob.

^k Leg. Edward. confes. cap. 1. & in Rog. de Hoveden. annal. 1. pag.

fecerit lac decima die; similiter agnum decimum, vellus decimum, calcum decimum, butyrum decimum, porcellum decimum. De apibus vero similiter decima commodi. Quin & de bosco, de prato & aquis & molendinis, parvis, vivariis, piscariis, virgultis & hortis, & negotiationibus & omnibus rebus quas dederit dominus. Decima pars ei reddenda est, qui novem partes simul cum decima largitur. Qui eam detinuerit per justitiam episcopi & regis (si necesse fuerit) ad redditionem ¹⁰ arguatur. Haec enim praedicavit B. Augustinus, & concessa sunt a rege baronibus & populo.

But however those laws are attributed to the confessor; it is certain, that as the ordinary copies of them are, and as they speak in the published volume of *Saxon* laws, they are not without many mixtures of somewhat later transcribers.

XIV. In a synod, ¹¹ written in *Saxon*, and held about the conquest, divers laws preceding, about the punishment of crimes by fasting six, seven, ten years together with bread and water, a perswasion follows for alms, &c. In it we read *teofre on zober eft æl 7 þe æge. that is, let tythe be paid of all that is possessed through the Lord's bounty.*

XV. Out of a ms. of *Exeter* I have seen ¹² transcribed a canon of a council held at *Windsor*, some years after the *Norman* conquest, I think under *Lanfrank*, in these words, *Ut laici decimas reddant sicut scriptum est.*

XVI. In a convocation at *Westminster* ¹³ held in 3 *Hen. I.* under *Anselm* archbishop of *Canterbury*, and *Girard* archbishop of *York*, for both provinces, it was ordained, *ut decimae non nisi ecclesiis dentur.* It was not only a Synod of the clergy; but royal authority with the assent of the baronage (at least of the greater nobility) was joined with it. For thus speaks the monk of *Malmesbury* relating it.

Anno Dominicæ incarnationis 1102. quarto autem præfatus Paschalis summi pontificis, tertio regni regis gloriosi Henrici Anglorum, ipso annuente, communi consensu episcoporum & abbatum & principum totius regni, adunatum est concilium in ecclesia beati Petri in occidentali parte juxta Londoniam sita, in quo præfedit Anselmus, &c. and then. Huic conventui assuerunt, Anselmo archiepiscopo petente a rege, primates regni, quatenus quicquid ejusdem concilii auctoritate decerneretur, utriusque ordinis concordia cura & sollicitudine ratum servaretur. Sic enim necesse erat; quia multis retro annis, synodali cultura cessante, vitiatorum vepribus succrescentibus, christianæ religionis fervor in Anglia nimis refrigerat.

And agreeing to this reason, is a passage in the ¹⁴ synod of *London*, held under *Lanfrank* archbishop of *Canterbury*, in 9 *Will. I.* *Et quod* (are the words) *multis retro annis in An-*

glico regno usus conciliorum obsoletus, renovata sunt, &c. That canon seems to have been made against arbitrary consecrations of tythes then practised, whereof anon largely.

XVII. The laws ¹⁵ of *Henry I.* have one title, *De placitis ecclesiae pertinentibus ad regem,* and under that, are these words; *Si quis rectam decimam superaveat, vadat præpositus regis & episcopi & terræ domini cum presbytero, & ingratis auferant, & ecclesiae cui pertinebit reddant, & nonam partem relinquunt ei qui decimam partem dare noluit;* according to those of king *Edgar* and king *Knout* ¹⁶ before related.

XVIII. *Alberick* bishop of *Ostia*, legate in *England* to pope *Innocent II.* in 3 of king *Stephen*, held a synod at *London*; and in that (as I have seen it transcribed out of a book of *Worcester*) this canon is, *De omnibus primitiis rectas decimas dari apostolica auctoritate præcipimus, quas qui reddere noluerit anathematis in eum sententia præferatur.* *Primitiæ* mult, it seems, be here understood for every new year's increase.

XIX. Under *Henry II.* a pontifical decree was sent to all the bishops of the province of *Canterbury*, about the year M.C.LXX. by pope *Alexander III.* ¹⁷ commanding them that they should admonish all men in their several dioceses, *& si opus fuerit, as the words are, sub excommunicationis districtione compellere, ut de proventibus molendinorum, piscariarum, fœno, & lana, decimas ecclesiis, quibus debentur, cum integritate persolvant.* The direction of it was, *Cantuariensi archiepiscopo & ejus fratribus.* To this you may add, that other ¹⁸ of the same pope to the bishop of *Winchester*: *Mandamus, quatenus parocianos tuos de apibus, & de omni fructu decimas persolvere ecclesiastica districtione compellas.* Both these were afterward made part of *Gregory's* decretals, and are of force to this day in the canon law of the church of *Rome.*

XX. In 21 of the same king *Henry II.* *Richard* archbishop of *Canterbury* held a provincial synod at *Westminster*, in which were near all the bishops and abbots of his province, as also the two kings, the father and the son; there, divers constitution out of old councils and popes decrees were published to be observed in his province, among them, one is out of a synod at *Rosie*, in ¹⁹ these words:

Omnēs decimæ terræ sive de frugibus sive de fructibus, domini sunt & illi sanctificantur: sed quia multi modo inveniuntur decimas dare nolentes; statuiamus, ut juxta domini papæ præcepta admonerentur semel, secundo, & tertio, ut de grano, de vino, de fructibus arborum, de fructibus animalium, de lana, de agnis, de butyro &

¹⁰ Forte adigatur. ¹¹ Recens ms. apud V. c. Rob. Cotton. Malmesb. lib. 2. de gest. pontific. fol. 129. b. a. d. 1102. ¹² In lib. rub. (causarum) ms. cap. 12.

¹³ Extr. tit. de dec. cap. 6. pervenit & in app. ad concil. Lat. tit. de decim. ¹⁴ Extr. de Hoveden in annal. part. 2. fol. 311. a.

¹⁵ In excerptis ms. apud eundem.

¹⁶ Apud eund. lib. dist. fol. 117. b. & in epist. Lanfranci ms. in bib. ¹⁷ In excerptis ms. in bibloth. Cotton.

¹⁸ Extr. de tit. c. 6. nunciatus.

¹⁹ Apud Rogerium

caseo, de lino & canabe & de reliquis quae annuatim renovantur, decimas integre perfolvant. Quod si communiter non emendaverint, anathemati se noverint subjacere.

XXI. Hubert, archbishop of Canterbury, by his power legatin, received from pope Celestin III. in 6 Ricb. I. held a provincial council for the province of York; and therein^a one of the canons thus speaks for tythes. *Cum decimae sint tributa egentium animarum & ex praecepto domini dari debeant, non est reddendis eas diminueri. Statuimus itaque ut de his quae renovantur per annum, cum omni integritate decimae debitae & consuetae conferantur; ita ut inprimis decimae absque ulla diminutione ecclesiae dentur, postmodum de novem partibus mercedes messorum & aliorum servientium pro arbitrio solventis tribuantur.*

XXII. The same archbishop Hubert in 2 of king John's generale celebravit concilium Londoni apud Westmonasterium contra prohibitionem Galfridi filii Petri comitis de Essex tunc temporis summi justitarii Angliae. For it appears, that in those elder times, there^b was great controversy between the king, in whose right the chief justice of England here sent out his prohibition, and the archbishop touching this point, whether the archbishop, either as archbishop, or as legat, might hold a provincial or national council without authority from the crown; but that is now declared clear^c and so practised that he may not. In that council, notwithstanding the prohibition, he ordained thus for tythes.

Cum Deo & sacerdotibus Dei decimas dandas, Abraham factis, & Jacob promissis innuat, & auctoritas veteris & novi testamenti nec non & sanctorum patrum statuta declarant decimas de omnibus, quae per annum renovantur praestandas; id inviolabiliter decernimus observandum, ita quod occasione mercedis servientium vel messorum decima pars non minuat, sed potius integre perfolvatur. Habeant etiam presbyteri potestatem ante autumnum excommunicandi omnes fraudatores decimarum suarum, & eosdem secundum formam ecclesiasticam absolvendi. Huic adjicimus sanctioni, ut de terris noviter cultis, non alias dentur decimae quam ecclesiis parochialibus infra quarum limites terrae illae de quibus decimis proveniunt excoluntur. Detentores vero decimarum, juxta Rothomagensis concilii constitutum, si semel secundo & tertio communiti, excessum suum non emendaverint, usque ad satisfactionem condignam anathematis vinculo feriantur, salvo in omnibus S. S. R. E. honore & privilegio. Which salvo is to every of his canons.

XXIII. Among the decretal epistles of pope Innocent III. one^d is directed,

Cantuariensi archiepiscopo, ut ecclesiis parochialibus juste decimae perfolvantur; and thus speaks. Pervenit ad auditiam nostram quod multi in diocesi tua decimas suas integras, vel duas partes ipsarum non illis ecclesiis in quarum parochiis habitant, vel ubi praedia habent, & a quibus ecclesiastica percipiunt sacramenta, perfolvunt; sed eas aliis pro sua distribuant voluntate. Cum igitur inconveniens esse videatur & a ratione dissimile, ut ecclesiae quae spiritualia seminant, metere non debeant a suis parochianis temporalia, & habere; fraternitati tuae auctoritate praesentium indulgemus, ut liceat tibi super hoc non obstante contradictione vel appellatione cujlibet, seu consuetudine hactenus observata, quod canonice fuerit ordinare, & facere quod statueris per censuram ecclesiasticam firmiter observari. Nulli ergo, &c. confirmationis, &c. Datum Lateran. II nonas Julii.

XXIV. In a collection of divers constitutions for the English church, out of councils and others, titled only^e constitutiones cujusdam episcopi, and written about Hen. III. time, one of tythes occurs. *Decimas de omnibus quae renovantur per annum & maxime consuetas, dandas decernimus, & potissime de molendinis & piscariis & foenis & apibus & de terris arabilibus & ad prata postea vel ad pasturam redactis, ita ut occasione mercedis servientium vel messorum decima parte non frustrentur quo minus eam plene percipiant. Detentores vero earundem decimarum si semel secundo, & tertio communiti excessum suum non emendaverint; concedimus quod per capellanos locorum usque ad satisfactionem congruam excommunicationis vinculo feriantur. Cum autem hi qui decimas detinuerint vel subtraxerint ad poenitentiam accesserint, non admittant nisi per se vel per manum sacerdotis ei, cui decimae debentur, satisfaciatur competenter.*

XXV. A constitution for due payment of tythes^f was made about 30 Hen. III. by Walter Gray archbishop of York. I have only a note of it which I took out of the ms. but the words I could not now transcribe for want of the copy. The copy itself I once saw in the library of Mr. Henry Savil who is now with God.

XXVI. The chiefest of the English canon-laws, made for tythes (both predial and personal) is that commonly attributed to a council of Robert Winchelsey archbishop of Canterbury, held 13 Edw. I. at London; some copies^g referring it to archbishop Boniface and the time about 30 Hen. III. or to an old synod of Merton. But in the synod of Merton held 42 Hen. III. no part of it is extant. That I examined in the^h annals of the abbey of Burton, where the canons of that synod are at large col-

^a Apud eundem part. 2. fol. 430

^b Apud eundem part. 2. fol. 457. b. & 460. a.

^c Consultas litt. de 10 Ed. II. in

vol. in quo Turcoman Dandelensis reperitur in bibliothec. v. c. Tho. Allen, Oxon. & 41.

^d Innoc. III. in epist. decret. lib. 2. pag. 412. edit. Colonien.

^e In vol. in quo annal.

^f Stat. 15 Hen. VIII. cap. 19.

^g Conflit. Eborac. ms.

^h Vide Lindw. in provinc. confl. tit. de dec. c. quo-

am propter in praefationem.

ⁱ Ms. apud v. c. Tho. Allen, Oxon.

lected. Yet in the *pupilla oculi*, written by *John de Burgo*, chancellor of *Cambridge* in *M.cccc.lxxxv.* it is called *constitutio facta apud Merton per omnes episcopos Angliæ*. These are the words of it, as it remains in the body of the provincial constitutions.

Quoniam propter diversas consuetudines in petendo decimas per diversas ecclesias inter rectores ecclesiarum & parochianos suos, rixæ, contentiones, scandala & odia maxima multoties oriuntur. Volumus & statuimus quod in cunctis ecclesiis per Cantuariens. provinciam constitutis, uniformis sit petitio decimarum & proventus ecclesiarum. Imprimis volumus quod decimæ de frugibus, non deductis expensis, integre & sine aliqua diminutione solvantur : & de fructibus arborum : & de feminibus omnibus, & de herbis ortorum, nisi parochiani competentem fecerint redemptionem pro talibus decimis. Volumus & statuimus etiam quod decimæ de foenis ubicunque crescant, sive in magnis pratis sive in parvis sive in cheminis exigantur, & prout expedit ecclesie persolvantur. De nutrimentis autem animalium scilicet de agnis : statuimus quod pro sex agnis & infra, sex oboli dentur pro decima. Si septem sint agni in numero, septimus agnus detur pro decima rectori, ita tamen quod rector ecclesie qui septimum agnum recipit, tres obolos in recompensationem solvat parochiano a quo decimam illam recepit. Qui octavum recipit, det denarium. Qui vero nonum, det obolum parochiano vel expectet rector usque ad alium annum donec plenarie decimum agnum possit recipere si maluerit : & quom ita expectat semper exigat secundum agnum meliorem vel tertium ad minus de agnis secundi anni : & hoc pro expectatione primi anni. Et ita intelligendum est de decima lanæ. Sed si oves alibi in hyme & alibi in aestate nutriantur, dividenda est decima. Similiter si quis medio tempore emerit vel vendiderit oves, & certum sit a qua parochia illæ oves venerint : earundem dividenda est decima sicut de re quæ sequitur duo domicilia. Si autem incertum fuerit, habeat illa ecclesia totam decimam infra cujus limites tempore tonsionis inveniuntur. De lacte vero volumus quod decima solvatur dum durat ; videlicet de caseo tempore suo. Et de lacte in autumno & hyme nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & commodum ecclesie. De proventibus autem molendinorum volumus quod decimæ fideliter & integre solvantur. De pasturis autem & pascuis tam non communibus quam communibus statuimus quod decimæ fideliter persolvantur : & hoc per numerum animalium & dierum ut expedit ecclesie. De piscationibus & apibus sicut de omnibus aliis bonis quæ acquisitis quæ renovantur per annum, statuimus quod decimæ solvantur & exigantur debito modo. Statuimus etiam quod decimæ personales solvantur de artificibus & mercatoribus, scilicet de lucro negotiationis. Similiter de carpentariis, fabris, cementariis textoribus, pandoxaricibus, & omnibus aliis operariis stipendiariis, ut videlicet dent decimas de stipendiis suis,

nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen ecclesie si rectori ipsius ecclesie placuerit. *Then a word or two of mortuaries ; after which,* Sed quoniam invenimus multi decimas sponte dare nolentes ; statuimus quod parochiani moneantur primo secundo & tertio ut decimas Deo & ecclesie fideliter solvant. Quod si non emendaverint, primo ab ingressu ecclesie suspendantur, & sic demum ad solutionem decimarum per censuram ecclesiasticam si necesse fuerit compellantur. Si autem dictæ suspensionis relaxationem vel absolutionem petierint : ad ordinarium loci mittentur absolviendi ; & debito modo puniendi. Rectores autem ecclesiarum seu vicarii aut capellani annui qui prædictas decimas prædicto modo propter formidinem hominum seu favorem, timore Dei postposito, ut prædictum est, cum effectu non petierint ; pæna suspensionis innodentur donec dimidium marcam argenti pro sua inobedientia archidiacono loci persolvant.

And then follow two other constitutions, under *Winchelsey's* name, for some more peculiar order in payment. But that first referred to him, is in a ms. ¹ (written of about the time of *Henry VI.* of the *English* episcopal constitutions) severally thus titled, *constitutio domini Stephani de Langtone archiepiscopi edita de modo decimandi.* *Stephen* of *Langton* was archbishop under king *John*. But it is not extant in the synod of his time.

XXVII. In a council at *London*, under *Simon Mepham*, archbishop of *Canterbury*, held in 3 *Edw.* III. a ¹ canon is against such as hindered churchmen from taking their tythes, either by keeping them and their servants from entering into the land, or by exacting ^m gloves, stockings, or some such bribes, before they would permit them to take that right, which God, as it is there inserted, in *signum universalis domini sibi reddi præcepit*, & pro suo cultu clericis assignavit. All such offenders are branded with excommunication ; and another constitution of a council of *Pauls*, held in 17 *Edw.* III. under *John Stretford* archbishop of *Canterbury*, is to the self-same purpose.

XXVIII. For tythe of copice-wood, or *silva caedua*, also in that of *Stretford*, was a ⁿ canon in these words :

Quoniam exsolventibus bene decimas Deus frugum omnium abundantiam & possessionum promiserit ubertatem ; tamen dolentes referimus quod nonnulli nostræ provincie contra testamenti veteris atque novi doctrinam de sylvis suis caeduis & lignis arborum caeduarum excisis, circa quæ minus, quam circa fructus agrorum, laboris impendunt, decimas Deo & ecclesiis quibus debentur notorice, propter hoc quod ipsas in præteritum non dederunt, solvere contradicunt ; quod aestimant idcirco licere quod legem moris de longa invaluisse consuetudine arbitrantur, in dubium etiam revocantes quid silva caedua sit censenda. Nos igitur advertentes quod si sua

¹ Part. 9. cap. 3.

¹ In biblioth. autoris.

¹ Extrat. in constit. provinc. lib. 3.

de Actione in constit. Othoboni c. mandata Dei verb. iustitiam favor expellit.

ⁿ Consequitur etiam de hac injuria Jo.

^m Extrat. libid.

portione ecclesia sit defraudata diutine, crimen praeterea non minuitur sed augetur: ac fames & penuria omniumque rerum egestas opprimitur bene decimas non solventes; hujusmodi declaramus provisione concilii silvam caeduum illam fore quae cuiuscunque existens generis arborum in hoc habetur ut cadatur, & quae etiam succisa rursus ex stirpibus aut radicibus renascitur; ac ex ea decimam utpote realem & praedialem parochialibus ac matricibus ecclesiis persolvendam; nec non silvarum possessores hujusmodi ad praestationem decimarum lignorum ipsorum excisorem in eis, sicut foeni & bladorum omni censura ecclesiastica fore canonice compellendos.

By this, tythe of all kind of wood was payable; but in the parliament with which that convocation was held, a petition was exhibited by the commons, *Que nul home soit tref en plee en court chrestien pur dismes de boisou de south bois si nonn en lieux ou tielz dismes soloient estre donez.* And the answer was, *Soit fait de cella auxi come il ad este fait einz cez heures.*

XXIX. And the year following, in the next parliament, a complaint was against that constitution by the commons. *Item pria le commun que come constitution soit fait per les prelates a prendre disme de chefun maniere de bois quel chose ne fuit unques usee, & que nief & femes poent faire testament que est contre reson, que plese per lui & per son bon conseil ordainer remedic, & que son peuple demoege en mesme l'estate qu'ils soloient estre en temps de tous ses progenitours, & que prohibitions soient grantes a touz ceux que sont empledés de dismes de bois sans avoir consultation.* Which was no otherwile answered, but with, *le roy voet que ley & reason ent soient faits.*

XXX. Three years after, in 21 Ed. III. a petition was touching the same matter put thus in by the commons. *Item monstre la commune come nadgairs l'erevesque de Cantirby & les autres prelates ordenerent une constitution a donner dismes de subbois venduz tantselement, la ou avant ces heures nulles dismes furent donez, ore les gentz de seint esglise per force de la constitution pernent & demandent les dismes auxibien de gros bois come de subbois venduz & nient venduz econtre ce qu'ils ont usez puis temps de memoire, a grant damage de la commune de quoi ils prient remedic del un point & del autre.* To this is answered. *L'erevesque de Cantirby & les autres evesques ont responduz que tiele disme n'est demandee per reson de la dit constitution forsque de subbois.* But I well conceive not why they complain of the constitution, as made only for the tythe of wood sold. No such thing appears in it, that justifies their supposition.

XXXI. This tything of wood, and of such other things as were not of custom paid, still

vexed the commons. And therefore again in a parliament of 25 Edw. III. they exhibit this petition. *Item pria la commune, que si la clergie en droit des dismes de haut bois & southbois ou d'autre chose riens demandent ou attemptent de novel forsque seulement ceo & en les lieux d'ont ils ont este d'anciens temps seisis come en le droit de leur esglises, que pleise a nostre seignior le roy ent granter prohibition sans consultation a touz ceux que le voillent demander en tiel cas, & que les dites gentz de s. esglise soient defenduz a demander dismes de grosse bois.* Here the commons would have had such a liberty of discharge of tythes not usually paid, as the *Philippine* in France, and the like edicts of some other nations give the subject; but the answer was; *Le roy & son conseil se voillent de ceste petition aviser.*

XXXII. But upon new petition, by the lords temporal and commons in the parliament of 45 Edw. III. it was enacted (as you see in the published statutes, agreeing with the record) that tythe should not be exacted of great trees, being of twenty years growth, or above. And that upon a suit commenced in the spiritual court for such tythes, a prohibition should be granted, as it had been in former time also used: but that use, it seems, had been somewhat discontinued, through a reverence given to that synodal canon of archbishop *Stretford*. Although in 50 Edw. III. fol. 10, b. *Belknap* says, *That it was never seen, that tythes had been demanded of great trees and of timber.* This statute hath had still force in practice to this day.

XXXIII. Yet, notwithstanding this statute, the clergy were not so contented; but under pretence that it was not indeed, by sufficient authority, made a statute, but only an ordinance (the contrary whereof appears both in the roll and in the consent of following time) oftines afterward brought the temporality in question upon their canons; inso much, that in the parliament of 47 Edw. III. a bill was put in by the commons, reciting that of 45 Edw. III. and then relating, that *les persons de seint esglise entendaits que cel ordinance ne restraint my leur anciens accrochements, surmettants que ce ne fust my afferme pur estatut, sont occasions in court chrestien a contrarie del ordinance susdit a grant damage del people, per qui pleise a nostre seignior le roy d'asfermer ladite ordinance pur estatut a durer pur temps avenir, & que prohibition especiall sur mesme estatut de ceo soit fait en la chancellerie defendant que eux ne tignent plee en court chrestien des dismes de bois del age avantdir, that is, of twenty years.* The answer hereto was; *Soit tiele prohibition grantee come ad este use d'anciens temps.* Thus did the clergy and commons so differ touching execution of the canons; and inso much, that afterward also the commons put in a bill, *Que nul estatute ne ordinance soit faite ne grantee au*

* Rot. parl. 17 E. w. III. art. 9.
parl. fest. Hill. 23 Edw. III. art. 27.
art. 21.

* Rot. parl. 18 Edw. III. art. 9.

* Rot. parl. 21 Edw. III. art. 46.

Flound. comm. fol. 470. 9 Hen. VI. fol. 16, &c.

* Rot. parl. 21 Edw. III. art. 47.

* Rot. parl. 47 Edw. III.

petition du clergie si ne soit per assent de voz commens. Ne que vous dites commens ne soient obligez per nulles constitutions qu'ils sont pur leur avantage sanz assent de voz dites commens. Car eux ne veullent estre obligez a nul de voz estatutz ne ordonances sanz leur assent. But the answer was only this; Soit ceste mature declare en speciall. This by the way.

XXXIV. Here may be * remembered that agreement in the parliament at *Salisbury*, *Quod consultationes fieri debent de silva caduis, eo non obstante quod non renovatur per annum.* But to what parliament to refer that agreement, expressed by *concor datum fuit coram consilio regis in parlamento, &c.* I sufficiently know not, unless to that of 7 *Rich. II.* held at *Salisbury*, the rolls whereof have nothing of it.

XXXV. In 5 *Hen. IV.* a bill was put in by the 7 commons, against the exaction of tythes of quarries of stone and slate. Thus it speaks. *Item prient les commens que come plusieurs lieges nostre seigneur le roy sont souvent fois vexez & travailleez per parsons & vicaires de seint esglise per citations & censures de seint esglise pur dismes de peres & felattes ouveres & trabez bors de quares de sicome nul disme de nul tict pierre ne felatte unques ne s'est demande ne nulle disme ent paie, que pleise a granter que si ascun prohibition soit fait en le cas que nul consultation soit grant a contrarie.* Hereto the answer was; *Le roy s'advisera.* But you may see hereof more in the ancient opinions of the judges, delivered in the 2 register and * *Fitzherbert.*

XXXVI. In 27 *Hen. VIII. chap. 20.* it is enacted by parliament, that through all the king's dominions, every subject according to the ecclesiastical laws and ordinance of this church of England, and after the laudable usages and customs of the parish or other place where he dwelleth or occupieth, shall yield and pay his tythes &c.. And some other especial courses for recovery of tythes, are in that act ordained.

XXXVII. By the statute of dissolution of monasteries of 31 *Hen. VIII. chap. 13.* it was enacted, That the king and his patentees should hold the possessions of the dissolved monasteries discharged and acquitted of payment of tythes, as free, and in as large and ample manner, as the houses of religion held them at their time of the dissolution.

XXXVIII. After the dissolution of monasteries, to which, divers tythes and parish churches had been appropriated, and were now settled in the crown, and thence conveyed into lay hands, an act was made in 32 *Hen. VIII. cap. 7.* commanding every man, fully, truly, and effectually, to divide, set out, yield or pay all and singular tythes and offerings, according to the lawful customs and usages of the parishes and

places where such tythes or duties shall grow, arise, come, or be due. And remedy is given for ecclesiastical persons before the ordinary; and for laymen, that claimed appropriated tythes by grant from the crown, in the secular courts, by such actions as usually lay possessions had been subject to.

XXXIX. By the acts of 27 *Hen. VIII. cap. 21.* 37 *Hen. VIII. cap. 12.* and the decree made upon them, the citizens and inhabitants of London and the liberties were commanded to pay their tythes to the parsons, vicars, and curates of the city, according to a rate of the rents of their houses: that is, two shillings nine pence for every pound: and that if no rent be reserved, the tythe should be duly paid, according to what their houses had been last let for; and according to that also, are owners bound to pay. But a proviso is in the decree, that where a less sum than after two shillings nine pence the pound hath been accustomed to be paid for rythes, in such places the former custom should be continued. And some other particulars are in it, which are too long to be here transcribed; you may easily see it whole. But antiently, in London, on every Sunday, and other principal feast-day, the chief maintenance of the ministers was increased, by a farthing offered out of every ten shillings of rent. *Ex ordinatione antiqua*, says *Lindwood*, (and that ordinance, as I have heard, was either made by *Roger Niger* bishop of London, in 13 *Hen. III.* as a new one, or as a confirmation of former use, as which of these, I purposely abstain here to enquire) in dicta civitate, tenentur singulis dominicis diebus & in principalibus festis & sanctorum apostolorum & aliorum quorum vigiliis jejunantur, offerre pro singulis x solidis redditus domus quam inhabitant unum quadrantem. And the 111 farthings so yearly paid on Sundays only, came so near to the just tenth of the rent, that they were thought on as a tythe paid; the other being reputed rather by the name only of offerings. Which you may see in the same *Lindwood*; where he disputes the question, whether those farthings excused the citizens from personal tythes of their gains; and concludes, that they did not. But before these acts and the decree, no tythes, as tythes, were generally paid in that city. In some places they were, as in the liberty of *S. Martin's le grand*, which is rather in London than of it. Neither can I but here remember, that custom of the eastern church thus maintained chiefly with offerings, or *κατοικια*, as they called them, which especially appears in the answer of *Theodore Balsamon* patriarch of Antiochia, to Mark patriarch of Alexandria, touching the quantity of what was to be offered. He tells him, that no certain quantity is appointed by the canons, and that through inequality of mens estates (none of them giving any such part to the church as that it could discover their abilities) which permits not a regular certainty; they were contented

* Regist. orig. fol. 40. a.

† Rot. parl. 5 *Hen. IV.* artic. 61.

‡ Orig. fol. 10. b.

§ Nat. br. fol. 13. E. G.

¶ In coust. provinc. tit. de dec. c. sancta, §. negotiorum. * Vide 16 Ed. III. quare in pedit. 147. 17 Ed. III. fol. 13. a.

† Grant's coll. in report 11. fol. 16. a.

‡ In responsis. inter monumenta juris Graeco-Romani, edit. a Leunclavio & Frebero.

with what custom and free bounty of the givers bestowed. Ἐπει δὲ (says he) ἡ τὴν περὶ τῶν ἀποικιαλῶν, ἡ δὲ τῶν ἐκκλησιαστικῶν ἀποικιαλῶν (περὶ τῶν ἀποικιαλῶν ἡ τῶν ἀποικιαλῶν ἀποικιαλῶν) ἀρκεῖται τῇ συνήθειᾳ ἡ περὶ τῶν ἀποικιαλῶν. Which is in substance the same before in English.

XL. In 2 and 3 *Ed. VI. chap. 15.* it was enacted that all predial tythes should be thenceforth paid as of right they had been within forty years next preceding, or according to custom ought to have been, with allowance of privileges lawful prescriptions or compositions real: and personal tythes of gain by merchandise and artifice in such places, and as within *xl.* years preceding they had been accustomed used to be paid, are commanded to be paid yearly at or before *Easter*. Other particulars and the remedies given by the act may be easier found in it, than I can transcribe them.

XLI. To these may not amiss be added those laws for tythes, proposed by the *viii.* persons chosen to begin a new body of canon law for England in 5 *Ed. VI.* according to the first purpose of the statute of 25 *Hen. VIII. cap. 19.* (which was seconded also by the statute of 3 & 4 *Ed. VI. cap. 11.*) whereby *xxxii.* persons assigned by the king should have made it; neither were those *viii.* to have given sufficient authority to it according to those statutes, without approbation of *xxxii.* afterward that should have censured their reformation. The *viii.* were *Thomas Cranmer* archbishop of *Canterbury*, *Thomas bishop of Ely*, *Richard Cox* the king's almoner, and *Peter Martyr* doctors of divinity, *William May* and *Roland Tailor* doctors of law, and *John Lucas* and *Richard Gooderik* esquires. In what they proposed, is found a constitution in the king's name, that all predial tythes should be paid in kind to the ministry *integre & explete* (with an exception of timber trees of *xx* years growth) as also of the profits of mills, of turbaries, coal-mines, quarries of stone, and all other of like kind. Of all agistments also tythes are there payable, and of the increase of all kind of beasts, wild and tame: of fish, of butter, cheese, milk, wool, wax: and the statute of 2 and 3 *Ed. VI.* for tythes is there received for so much of it as is not assigned a general payment which they would have had ordained. But these, as the rest in the volume with them, were only intended for laws, but never had sufficient authority or confirmation. The intent was first that those canon laws only, which according to the purpose of the two statutes of *Hen. VIII.* and *Ed. VI.* should be compiled, might have authority in the universities, and force in practice; but so, that there might still be *præservatio legum nostrarum communium in suo vigore remanentium*, as the words are in the patent of *Edward* the sixth, that authorizes the *viii.* persons to consult about them.

For our laws of tything either made or defi-

red, thus much. But before we speak of the practice, it is requisite that we enter into some disquisition touching parishes or parochial right according whereto at this day from ancient time the payment of tythes is regularly performed.

CHAP. IX.

I. Of parishes in the primitive church of the Britons.

II. Parishes in the primitive church of the English Saxons: first limited only in regard of the ministers function, not of parochial profits. All the profits of every whole diocese, first made a common treasure to be disposed of by the bishop and his clergy, of the same diocese. Residence of the bishop and clergy in those times. The great regard then had to every clergyman.

III. Of division of our parishes. Whether *Honorius* archbishop of *Canterbury* first divided them? *Parochia* or *parocia* diversly taken.

IV. Lay foundations of parish churches; from whence chiefly came parochial limits in regard of the profits received to the singular use of the incumbents. Limitation of tythes by king *Edgar* to the mother-parish church, or monastery. Monasteries preferred before other churches for burial. Mortuaries. *Μουστρον*. A third part of tythes (according to king *Edgar's* law) must be given to a new built church that had right of sepulture by the founder. *Sepultura* and *baptisterium*. *Capella parochialis*. A parish commanded to be made (out of another that was too large) by the pope. One parish joined to another by the king.

IN consideration of our parish churches and parochial limits, the times of the Britons first, then of the English-Saxons and forward are to be thought of; that is, the elder times of their christianity.

I. FOR the Britons; little or no testimony of credit is extant that discovers the ecclesiastical policy used by them, in their primitive times, or declares the possessions of their hierarchy. And we omit here wholly what might be collected out of that fabulous tale of *Augustine* preaching at *Cometon* in *Oxfordshire*, whereof more in the next chapter. Although king *Lucius* had instituted *xxviii.* bishops, and *iii.* archbishops (as the British story tells us) yet, how in those dioceses any distinct parishes were, appears not expressly. But we may very well think that such kind of parishes only were in those bishopricks as we have already shewed

to have been in the primitive church elsewhere: neither is it likely that in those times, the custom of this island therein should differ from what was even uniformly received through those parts of christendom, whereof we have best testimony remaining. But if all antient authority were of credit, parish churches expressly mentioned of about the time of cccxc, and endowed as at this day, might be found among the Britons. For when *Dubritius* was made archbishop of *South Wales* which they called *dextralis Britannia*, and his see appointed at *Llandaff* under *Maurice* prince of that *Wales*, divers churches with their endowments of tythes, oblations, and other profits were appropriated to him and his successors; by the relation of an old author: *Propter sanctitatem suam, ac his¹ words, & praedicationem praecaram beati pastoris & regalem parentelam suam plures ecclesiae cum suis dotibus, decimis, oblationibus, sepulturis, territoriis & libera communione eorum datae sunt sibi & successoribus suis omnibus a regibus & principibus totius regni dextralis Britanniae.* And then; *Videns autem sanctus Dubritius largissimam potentum manum erga sibi commissam ecclesiam, partitus est discipulos mittens quosdam discipulorum suorum per ecclesias sibi datas, & quasdam fundavit ecclesias, & episcopos per dextralem Britanniam coadjutores sibi, ordinatis parochiis suis, consecravit.* But this author wrote not before about the beginning of the last cccc years from *Christ*, and spake of these things in the phrase of his own time: the hand and context and their relations in him justify it. He talks, you see, of churches endowed and appropriated and founded, as if he meant no other than such as now are conveyable by patrons and ordinaries in the course of appropriations used in later ages, and filled with incumbents that had in them like estates and particular interest in the profits, as parsons at this day. Indeed, that in those times churches were built here, no doubt can be made; Neither is it to be conceived how² christianity could be in any nation much antienter (if generally received, or by any number) than churches or some convenient houses or other places in the nature of churches, appointed for the exercise of devotion. And express mention³ is of a church built here in the time of the *Romans*, to the honour of *S. Martin*, in which *Augustine* and his followers, when they came first from *Rome*, made their holy assemblies, and others also they repaired: and says *Gildas*, of the clergy of his time, that is, about d.lxxx. *ecclesiae domus habentes, sed turpis lucri gratia eas adeuntes.* But I guess, that under *Dubritius*, few or no parish churches were otherwise credited than for convenient places for such ministers as the bishop out of his clergy arbitrarily sent thither, and that the offerings and other profits there received, were to the common treasury of the diocese, and to be dispensed as is before declared, where we speak generally of those elder

times: And in regard no more certainty of the establishing of the endowments, or places of residence in the *British* hierarchy, may be found; I willingly permit to every man his own conjecture.

II. For the age of the Saxons; we read that *Augustine* and his company, when they first came to king *Ethelbert* in *Kent*, began there to imitate¹ *apostolicam primitivae ecclesiae vitam, ea tantum quae viciis necessaria videbantur ab eis quas docebant accipiendo*; and that after they had converted the king, they builded and repaired churches; *maiores praedicandi per omnia, & ecclesias fabricandi vel restaurandi licentiam accipiebant.* So *Ethelbert* in his charter of foundation (if you will believe the authority² whence we have it) of his abbey in *Canterbury*, talks of *alias quas fabricavi ecclesias.* And doubtless those churches which they built, or repaired, as also the temples of the *Gentiles*, which by advice of pope *Gregory* to *Mellitus*, were not to be destroyed, but converted to christian service, had some kind of limits of adjoining villages or towns; and so were in that respect, parochial. But those limits and churches were variously chosen and assigned to ministering priests, according to the convenience of the assembling of the neighbour-inhabitants; but not so ordained that every parishioner was bound to keep his devotion within the limits of this or that parish church; that is, parishes were then limited only in regard of the ministering presbytery (whence they were called *parishycan*, i. e. *circuits*, within which the priests exercised their *striving*) but not in regard of the profits received from the parishioners. For the whole diocese (first of *Canterbury*, then of the other elder bishopricks, as they were instituted) was indeed the only limited parish, in regard of the parishioners profits; And the clergy of the bishop, that is, his family of churchmen, were the curates in inferior churches, according as the bishop appointed and altered them; And whatsoever they received through devotion of good christians, made up a common treasure for the whole diocese (whence it followed, that it was not material at what church any parishioner offered his christian bounty, so he did it within the diocese) which was both consonant to what is found to be the use of other churches in the primitive times, and is also confirmed by that *Augustine* in his question to pope *Gregory*, touching bishops. He demanded *qualiter cum suis clericis converfentur? vel de his quae fidelium oblationibus accedunt altari, quantae debeant fieri portiones?* Whereto the pope answers, that the custom is generally to make a quadripartite division for the bishop, for his clergy, for the poor, and for reparation of churches: but he admonishes him, that in the tenderness of the *English-Saxon* church, he and his clergy should still imitate the community of all things used in the primitive times under

¹ Anonym. ms. de primo statu Landavens. ecclesiae in bibl. Cottoniana; eadem in codice Landav. qui Tilo dicitur, habentur. Recentius autem excerptus Tilo reperitur in eadem bibliotheca.

² Bedae hist. eccles. lib. 1. cap. 26.

³ Bedae lib. 1. cap. 26.

⁴ 1 ad Cor. cap. 11. 22.

⁵ Sed videbis 1680r. Pelusiac. lib. 2. epist. 246.

⁶ Caro antiq. 1. 1. in aere Londini.

the apostles. The *Saxons* of that question¹ is observable. *Æfter þe biſceþum; hu hie mid hoþa geþeþum ſpohtan 7 lupan ſcyen. Oððe in ſæm lacum geleafuma þe hie to reoþotum, 7 to goðe cýncum þenxæð, hu monige bæclý þa beon ſcýle: that is, First concerning biſhops. How they ſhould bear themſelves among their clergy, or how many parts they ſhould have in the offerings that good chriſtians brought to altars and to God's churches? Here it is more plainly expreſſed, that whatever came to any altar or church, with in the dioceſe, was one common profit to be divided or employed, as pope Gregory answers; where he tells him alſo that the biſhop and his clergy² muſt live together. Sed, ſaith he, quia fraternitas tua monaſterii regulis erudita, ſorſum vivere non debet a clericis ſuis in eccleſia Anglorum &c. So that you may collect that in theſe primitive times of the *Engliſh-Saxon* church, the biſhop and the whole clergy of the dioceſe were as one body living upon their endowments (beſtowed on the biſhoprick) and their treaſure that came from the ſundry places of devotion, whether ſome one or other of them, at the biſhop's appointment, was ſent to preach the word and miniſter the ſacraments; every clerk having his dividend for his maintenance. Neither in theſe elder times, I think, did any of theſe of his clergy or chaplains uſually reſide elſewhere than with him at his biſhoprick, as deans and chapters at this day, or in ſome monaſteries; whence they might as occaſion required, at certain times go into thoſe pariſhes which were diſtinguiſhed only for ſeveral functions of thoſe chaplains, leſt want of ſuch diſtinction might the ſooner have cauſed alſo a want of ſpecial diſcharge of this or that cure. So that there were ſingularum eccleſiarum preſbyteri³ qui populum erudire debent, and they were particularly ordained for the title of this or that church, and every one was bound by our canons of that time not to leave the church for which he was ſo ordained. And from their reſidence with the biſhop, or out of the pariſh in monaſteries, came it, as it ſeems, that they were but rarely ſeen abroad among the people; for ſo rarely were they ſeen abroad, that whenever any of them were eſpied in the country, the people uſed preſently to flock about him, and with all reverence humbly to beſeech his benefactions, either by ſigning them with the croſs, or in holy prayers for them; and, with all earneſtneſs of attention, they heard what he preached. This is that which Bede⁴ teaches, when he tells us, that ſi quis ſacerdotum in vicum forte deveniret, mox congregati in unum vicant, verbum vitæ ab illo expetere curabant. And again; Erat quippe moris eo tempore populis Anglorum, ut, veniente in villam clerico vel preſbytero, cuncti ad ejus imperium verbum audiri conſuerunt, libenter ea quæ dicerent audirent, libentius ea, quæ audire & intelligere poterant, operando ſequerentur. How long this communi-*

ty in every dioceſe between the biſhop and his attending clergy, which is denoted often by the name of *epiſcopi clerus*, continued, fully appears not. But that it was not out of uſe till paſt more than c years after *Auguſtine's* coming, that is, till paſt 1000 years from *Chriſt*, may be conjectured out of thoſe teſtimonies of *Bede*, which extend as far.

III. Yet it is commonly received, that *Honorius*, the firſt archbiſhop of *Canterbury* after *Auguſtine*, about the year D.C.XXX. firſt divided his province into pariſhes. And in the late hiſtory of the archbiſhops of *Canterbury*, written by Mr. *Jofcelin*, it is thus delivered of him. Neque ſolum epiſcopos ſauquam ſuperiores turrium enſlodes eccleſiæ ſuperimpoſuit, ſed etiam, provinciam ſuam primus in parochias dividens, inferiores miniſtros ordinauit. And according to this, have ſome of our greateſt and moſt learned writers related. But I doubt much how it can at all ſtand with truth. For if *parochiæ* be here meant only for ſuch as were aſſigned limits for thoſe which were ſent arbitrarily from the biſhop, out of the number of his chaplains, or his *clerus*, reſiding for the moſt part, in thoſe elder times, with him at his biſhoprick; then clearly, *Honorius* was not the firſt that made diviſion of them. Such kind of *parochiæ* are even near as antient as biſhopricks; and queſtionleſs, in *Auguſtine's* time. How could otherwiſe, God's ſervice be orderly had in the infancy of the church? And when ever ſeveral churches for chriſtian ſervice, or other places for holy aſſemblies, began, then began ſuch *parochiæ*. And that churches were built here before *Honorius* his time, is before maniſeſt. If, on the other ſide, *parochiæ* be taken for what it is uſually underſtood, that is, for ſuch limits as now make pariſhes, bounded as well in regard of the profits received from the pariſhioners (due only to the miniſter of that church) as of the incumbent's function and reſidence; how will that ſtand with the community of eccleſiaſtick profits, and the biſhop's and his clergy's living together, that may be without much difficulty diſcovered out of *Bede*, to have continued after *Honorius* alſo? But where ever that teſtimony of his dividing pariſhes was firſt found, I doubt it was miſunderſtood, through the various ſignification of *parochia*. For in thoſe antient times, *parochia* uſually denoted as well a biſhoprick, or dioceſe, or biſhopſhip, as the *Saxons* called it, as a leſs pariſh. That ſignification is very obvious in the old councils of both tongues (as it is alſo ſpecially obſerved by the learned *Fileſacus* in his *parocia*) and in the monuments of this kingdom. For it is related of king *Cenwalch*, that he divided⁵ provinciam in duas parochias, when he made a new biſhoprick at *Wincheſter*, that was taken out of the dioceſe of *Dorcheſter*. And in the council of *Hertford*, held under *Theodore* archbiſhop of *Canterbury*, one canon is; *Ut nullus epiſcoporum paro-*

¹ Erat in Beda exemplaris Saxonici ms. lib. 3. in bibl. Cottoniana.

Anglic. c. 1. & 6. ann. 786. centur. 8. cap. 9.

etel. lib. 3. cap. 7.

² Vide eum hiſt. eccleſ. lib. 3. cap. 26. & lib. 4. c. 27.

³ Idem lib. 4. c. 5. & videſis c. 16. q. 2. c. 6. lane.

⁴ Videſis Bedam hiſt. eccleſ. lib. 4. cap. 17.

⁵ Vide eum hiſt. eccleſ. lib. 3. cap. 26. & lib. 4. c. 27.

⁶ Synod.

⁷ Beda hiſt. ec-

cbiam alterius invadat sed contentus sit gubernatione creditae sibi plebis. So in *Florence of Worcester*, under the year D.C.LXXX. *Merciorum provincia in quinque parochias est divisa*, that is, into five bishopricks. And the truth is, that it may be said properly enough, that *Honorius* was the first under whom his province was divided into such *parochiae*, or bishopricks; that is, no other bishopricks (except *Canterbury*, *London*, and *Rocheſter*) were in his province until his time; those three being almost of one antiquity. But under him, *Byrinus* was made first bishop of the *West-Saxons*, and had his see or bishoprick as they called it, at *Dorchester*, and *Fœlix* the *Burgonian* was likewise ordained first bishop of the *East-Angles* at *Dunwich*. Which two ordinations, in regard the like had not been in this province of *Canterbury* from *Augustine's* time till this *Honorius*, were perhaps the cause why it might be related, that *Honorius primus provinciam suam in parochias diviſit*. Which, although it were to be conceived of such parishes as at this day we call by that name, yet could not extend to all his province. For not till long after his time, was christianity received in the kingdom of *Suffex*, which was first converted by *Wilfrid*, first bishop of *Seſeſcy*, in the year D.C.LXXIX. Hitherto then, for ought can out of ancient monuments be proved, no limits parochial, in regard of the profits to be received from the parishioners, and spent by this or that minister only, were assigned. But the ancient course of a kind of community of all profits of the diocese, with the bishop and his clergy, remained still in use. Neither was the interest of many churches, it seems, as yet here in any layfounders. But the bishops, as I think, had both the interest and governance of the churches built by the king, and took care for building new in their own endowments, and hallowing old ones, that had been either profaned since christian service used in them among the *Britons*, or formerly consecrated only to heathenism. So may you understand that of *Byrinus*, first bishop of *Dorchester*. *Fallis dedicatisque ecclesiis multisque ad dominum, pro ejus labore, populus advocatis, migravit ad dominum*, as *Bede's* words are; in the *Saxon* of which it is expressed, that he cūnean þ þhre ȝ ȝeþeȝce, that is, made churches, and hallowed them.

IV. But afterward, when devotion grew firmer, and most laymen, of fair estate, desired the country-residence of some chaplains, that might be always ready for christian instruction among them, their families, and adjoining tenants; oratories and churches began to be built by them also; and being hallowed by the bishops, were endowed with peculiar maintenance from the founders, for the incumbents that should there only reside. Which maintenance, with all other ecclesiastick profits that came to the hands of every such several incumbent (in regard, that now the lay-founder had,

according to the territory of his demesnes, tenancies, or neighbouring possessions, made and assigned both the limits within which the holy function was to be exercised, and appointed the persons that should repair to the church, and offer there, as also provided a special salary for the performance) was afterward also restrained from that common treasury of the diocese, and made the only revenue, which became perpetually annexed to the church of that clerk who received it. Neither was it wonder, that the bishops should give way to such restraint: For had they denied that to lay-founders, they had given no small cause also of restraining their devotion. Every man, questionless, would have been the unwilling to have specially endowed the church, founded for the holy use chiefly of him, his family, and tenants, if withal he might not have had the liberty to have given his incumbent, there resident, a special and several maintenance; which could not have been, had the former community of the clergy's revenue still remained. Out of these lay-foundations chiefly, doubtless came those kind of parishes, which at this day are in every diocese: their differences in quantity being originally out of the difference of the several circuits of the demesnes or territories possessed by the founders. And after such time as upon lay-foundations, churches had their profits so limited to their incumbents, no doubt can be, but that the bishops, in their prebends, or advowsons of parishes, both in cities and in the country, formerly limited only in regard of the minister's function, restrained also the profits of every of their several churches, to the incumbents; that so an uniformity might be received in that innovation of parochial right. At what time these lay-foundations began to be frequent, plainly enough appears not. But some mention is of them about the year D.CC. as you may see in *Bede*, where he speaks of one *Puch*, a *Saxon* nobleman, that had built a church, and entreated *John*, bishop of *Hangulſtad*, to consecrate it; and the like also of one *Addi*. *Alio item tempore*, says he, *vocatus ad dedicandam ecclesiam comitis vocabulo Addi*. Some such more, of about that time, may be found. But about the year D.CCC. many churches, founded by laymen, are recorded to have been appropriated to the abbey of *Crowland*, as you see in the charters of confirmation made by *Bertulph* king of *Mercland*, and of others, to the same abbey, reported by *Ingulphus*. Whence it may be observed, that by this time lay-foundations were grown very common, and parochial limits also of the parishioners' devotions. And in a council held in D.CCC.XVI. under *Wilfrid*, archbishop of *Canterbury*, we find, *Ubi ecclesiae adſeſcentur, à propriae diocesis episcopo ſanctificentur*. And a canon of the same synod ordains, that upon the death of every bishop, *Statim per singulas parochias in singulis quibusque ecclesijs, pulſato ſigno, omnis famulorum Dei coetus ad ba-*

† Hist. eccl. lib. 5. cap. 4 & 5.

‡ Ms. (in biblloth. Cottoniana) cap. 10.

solicam conveniat. Ibiq; pariter xxx. psalmos pro defuncti anima decantent, & postea unusquisque antistes & abbas de psalterio & cxx missas celebrare faciat, & tres homines liberet, & eorum cuiuslibet tres solidos distribuat, &c. with other ceremonies of fasting and prayer, according to the time, for the soul of the bishop. Here, it may seem, parishes limited as at this day, are understood. But the first express mention of limitation of profits, other than of the endowing, to be given to this or that church, is in those laws of king *Edgar*, made about D.CCC.LXX, where a threefold division is of churches. The first is called *calban mynster*, that is, *senior ecclesia*, which name antiently was given to cathedral churches; the second, a church that hath *legenstoepe*, or place for burial; the third, a church that hath no *legenstoepe*. Where it is ordained, that every man, having not credited a church of his own, should pay his tythes to the *calban mynster* & *jeo hyperste to hyr*; that is, to the antientest church or monastery where he bears God's service. Which I understand not otherwise, than of any church or monastery, whither usually, in respect of his commorancy or his parish, (determined according to the farms, houses, and lands, occupied with those houses or farms) he repaired; that is, his parish church or monastery. For we must remember, that in those times, monasteries (which somewhat before *Edgar*^a were for the most part filled with secular clerks, who also, as other clergymen took pains abroad in the spiritual harvest; and under him by archbishop *Dunstan's* procurement were restored only to cloyster-monks or *Benedictines*) as well as other churches erected either by bishops or laymen, were in many places the only oratories and auditories that the near inhabitants did their devotions in, and perhaps were in regard of burial most commonly preferred before other churches whatsoever; Which may be collected from a canon of an old synod of Ireland held about these elder times of the English church: Neither is it likely but that the manners of these northern churches in that age were enough agreeable to each other. In that synod it appears, that any man might have bequeathed his burial to what abbey best pleased him, and that the abbot to whose monastery the bequest was made, should have the appard of the dead, his horse and his cow for a mortuary, although he had before solemnly given all that he had to any other abbot. Whence may easily be conjectured that monasteries were in chiefest reputation for burial, and had a right of it before any other kind of parochial church, if the dead made choice of any of them. And by the way, for that course of payment of a mortuary (which the Saxons, I think, called *raspreac*) the same synod^b affirms, that *omne corpus sepultum habet in jure suo vaccam & equum & vestimentum & ornamentum sui lesti; nec quicquam bonum reddetur in*

alia debita, quia corpori ejus tanquam vernacula debentur. And although the certain age of that synod appears not, yet it was after such time as parishes were limited in regard of the parishioners repairing to one certain church, and giving their devotions there only. For in it also are these words: *quicunque discesserit de sua ecclesia & in alia ecclesia sepultus fuerit, &c.* What can *sua ecclesia* be but such a kind of parish church, as at this day is titled so? that is, one limited in regard of the parishioners and their profits received from them. But in that of *Edgar's* *calban mynster*, it is plain that although *mynster* especially denote a monastery, yet all other parish mother-churches are understood by it: and indeed *cypic* and *mynster* are frequent, as synonymics in the *Saxon* monuments. But as the first part of his law that gives all tythes to the mother church of every parish, meant in them a parochial right to incumbents; so also the second part, that permits a third portion of the founder's tythes to be settled in a church new built, whereto the right of sepulture is annexed, makes a dispensation for a parishioner that would build such a church in his boelond, or land possessed *optimo jure*, or as inheritance derived from a charter of scotment. And however that second part also of this law, is iterated by king *Knout*; yet I doubt not but that such new erections within old parishes bred also new divisions which afterward became whole parishes, and by connivance of the time, took (for so much as was in the territory of that boelond) the former parochial right that the elder and mother-church was possessed of. For, that right of sepulture or having a *legenstoepe*, was, and regularly is a character of a parish church or *ecclesia*, as it is commonly distinguished from *capella*: And antiently if a *quare impedit* had been brought for a church, whereas the defendant pretended it to be a chapel only, the issue was not so much whether it were church or chapel, as whether it had *baptisferium* or *sepulcrum*, or no. So it appears in a case of^c 23 Hen. III. where *William of Wbitanston* in his count against the archbishop of *Canterbury*, expresses, *ecclesiam de Hey in Suffex* to be of his advowson, and the archbishop pleads, that what he calls a church, *non est ecclesia, imo capella pertinet ad matricem ecclesiam de Terringer, ita quod non est ibi baptisferium neque sepultura, imo omnes quin ascuntur ibidem baptizantur apud Terringer, & similiter omnes qui ibi moriuntur, sepeliuntur apud Terringer, &c.* And thence was it also that the whole clergy of *England* put the inquiry of such an issue among their grievances, when in 21 Hen. III. they desired *Otho* the pope's legate, among other freedoms, to get for them of the king, *Quod judices seculares non decident causas ecclesiasticas in foro seculari, nec tales homines determinant utrum talis capella debeat habere baptisferium & sepulcrum an non.* For, if it had the right of administration of sacra-

^a Leg. Francie. apud Filescam, lib. de parocia.

^b Regular. concordia Anglice nationis monach, f. 60. in monialtemo ms. in bibl. Cotton. & Malmesbur. lib. 1. de gest. pontific. fol. 117.

^c Videlicet. 26. quæst. 2. c. 13. Agapinus, & 13. q. 2. c. 6. ubiqueque, sed & vide append. ad consil. Later. part. 43. cap. 4.

^d Canon leg. cap. 13.

^e Trinit. placit. 13 Hen. III. rot. 15. in arch Londinens.

^f In annal. mo. monasterii Burtonensis, lib. 2. an. 1137. apud v. c. Th. Allen. Oxon.

^g In statut. synod. ms. in fæp. dist. biblioth. cap. 9.

^h In statut. synod. ms. in fæp. dist. biblioth. cap. 9.

ⁱ In statut. synod. ms. in fæp. dist. biblioth. cap. 9.

^j In statut. synod. ms. in fæp. dist. biblioth. cap. 9.

^k In statut. synod. ms. in fæp. dist. biblioth. cap. 9.

ments in it and sepulture also, then differed it not from a parish church, but might be stiled *capella parochialis*, by which name some chapels are with us known; And in the *Saxon* times also we find *coemiterium* * *capellae*, for the burial place of a chapel, which must be understood of a church that had the like right as that which is mentioned in the second part of *Edgar's* law. And those other churches which in his and king *Knut's* laws are spoken of, that is, churches without burial places, *polteynian*, or *field-churches*, are only what at this day we call chapels of ease, built and consecrated for oratories, but not diminishing any thing of the mother churches profits. But also besides those original lay-foundations, some parishes have had other beginnings since from alterations made in regard of the inconvenience of their former limits. And this by direction or authority both from the pope, or bishops, according as they saw occasion exacted; and from the king. For the pope; We may see in the example remaining in the decretals ⁴, where pope *Alexander* the third sends his decree to the archbishop of *Tork*, reciting that in a complaint made to him, he had heard that a certain town in his province was so distant from the parish-church, that it was very difficult for the inhabitants to repair thither, especially in winter, and withal that the church revenue of the parish, although that town were exempted, was not insufficient for the minister of the mother church; wherefore he commands the archbishop to build in that town a church, and with assent of the founder of the mother-church, to institute at the presentation of the rector an incumbent there, that might have to his own use all ecclesiastick profits increasing in the limits of the same town; and also acknowledge a superiority to the mother-church; and that he should do it also whether the rector of the mother-church would assent or not. For the king; An old example is in 13 *Hen. III.* where because the church of *S. Peter's* in *Chichester* was very poor, and that only two parsonages were in it, the king at request of *Ralph Nevill* then bishop there, and chancellor of *England*, grants, quod eadem ecclesia demoliat, & praedicti duo parochiani qui spectabant ad ipsam assignentur imperpetuum hospitali *S. Mariae*, quod eidem ecclesiae est vicinum, ut ibi deinceps percipiant spiritualia & sint parochiani ejusdem hospitalis. And such like commands, occasions, and conveniences, doubtless have altered and made the limits of divers parishes every where, both in the country and cities, which have to this day many of small territory, but of large number of communicants. For parochial limits, thus much.

CHAP. X.

I. The practice of tithing. Of king *Cedwalla's* tithing, being no christian. The custom

of the German-Saxons, in sacrificing their tenth captive to Neptune. Decima used for a less part also in ancient monuments.

- II. The practice of tithing in the christian times of our ancestors. The tale of *Augustine* and the lord of *Cometon* touching non-payment of them. The tythe of every dying bishop's substance to be given to the poor, by an old provincial synod. Tythes how mentioned in *Domesday*. Testimonies of payment of them. *Henry* the third his grant of the payment of tythe of hay and mills out of all his demesnes. The beginning of parochial payment of tythes in common and established practice in *England*. How that common assertion, that every man might have disposed his tythes at his pleasure, before the council of *Lateran*, is true and to be understood.

THE laws of this kingdom for payment of tythes, and the original of parochial right to profits accruing within the limits of every parish church (which were, after lay-foundations grew common, distinguished according to the adjacent possessions and tenancies of the founders, and their farms, manors, towns, and the like) being hitherto declared; the practice of the times remains to be also discovered.

I. IN that, something also is observable among the antients of this kingdom of a kind of tithing, related to have been where christianity was not yet received. Some of them tell us of *Cedwalla* king of the *West-Saxons*, that before his being made christian, about the year 686, he tythed all his spoils of war to the deity. So the monk of *Malmesbury*. *Arduum memoratu est*, faith he, *quantum etiam ante baptismum inserviret pietati, ut omnes manubias, quas jure praedatorio in suos usus transcriperat, Deo decimaret*. Neither, it he did so, was it without some example of his ancestors the German-Saxons, whence *England* was chiefly filled, who were wont to sacrifice to Neptune, I think, the tenth of all captives taken in their piracies and incursions made by sea upon the *Gauls* especially. So says my author, that lived about the time of the German-Saxons first arrival here: his words of them are. *Praeterea priusquam de continenti in patriam vela laxantes, hostico mordaces anchoras vado vellunt, mos est remeaturis decimum quemque captorum per aquales & cruciarias poenas, plus ob hoc tristi quod superstitioso ritu, necare superque collectam turbam periturorum mortis iniquitatem sortis aequitate dispergere. Talibus se ligant votis, villimis solvunt: & per hujusmodi non tam sacrificia purgati quam sacrilegia polluti, religiosam putant caedis insaufae perpe-*

* Lindwood, in tit. de censibus, c. quamvis lex naturae verb. una ecclesia & in tit. de celebr. missar. c. effrenata, & vide Bæd. fol. 741. b. & Flet. lib. 1. cap. 14. & Becon. fol. 226. b. ⁴ Juguliphus, fol. 489. b. ⁵ Ext. tit. de ecclesi. adific. caud. c. 1. ad audientiam. ⁶ Pat. 13 Hen. III. part. 1. membr. 7. ⁷ Sidon. Apollinaris lib. 8. epist. 6.

tratores, de capite captivo magis exigere tormenta quam pretia. Neither, I think, is any other express mention of this theit tything, among antient monuments. And, for that their sacrificing to *Neptune*; indeed the author *Apollinaris* here mentions him not; but it being done at sea, and *per aquales* (for so is the true reading, although some there read *aequalis poenas*) you may well conjecture it was to *Neptune* or to their supposed deity of the sea. And thus the most learned and noble monieur *Saxaron*, in his notes upon *Apollinaris*, expressly also makes it a sacrifice to *Neptune*. And although it be true that among their gods we find none named, that is denoted to aniver to *Neptune*; yet, that some deity of the same nature, that is some great sea-god was in their superstition, may be easily collected not only from this relation of their cruel devotions, but also from their wondrous and accurate observation of the ebbs and floods, called by them *ledons* and *malins*, which were the ⁶ chief directors of their account of times, as the sun and moon's motion hath ever been to other nations. Which doubtless was no small cause that the sea was to them reputed a deity, as the sun and moon also, before other creatures, in the antient theology of the *Gentiles*. But for that of *Cedwalla*; let it be upon *Malmesbury*'s credit, that he tyeth his spoils. *Bede*, who might better have known it than *Malmesbury* could, relates no such thing of him. He says only, that when he conquered the isle of *Wight*, according to a vow that he made to the deity, he gave for the Lord's use, the fourth part of the isle (that is, ecc. hides or plough-lands of m. cc) and of his martial gains, to *Wilfrid* archbishop of *York*, then being in those parts in banishment, and bishop of *Selsey*. And ⁶ *Fridegod*, that in the Saxon times wrote the life of *Wilfrid* in verse, says hereof only by apophthegm to *Cedwalla*.

Tu quoque pontificem multa tellure beasti.

and mentions no more in particular. That which in the *Latin Bede*, in this story, is called *familia*, is hye in the *Saxon*. And perhaps only such a kind of giving a fourth, or any part upon vow to the Lord, was in that passage of *Malmesbury* understood for tything. Why might it not, as well as the four thraves of corn of every plough-land, in the east-riding of *York*, given by king *Atthelstan* to the church of *S. John of Beverley* (which came, on the other side, not near to the tenth) be stiled *decimate* in a bull of one of the pope *Gregories*, (I think the ninth) which I have seen transcribed? As if *decimate* in one notion had signified any kind of revenue, devoutly offered to holy uses: as, upon other reasons, *δικατέριον* denotes also *καθαρίον* among the *Greeks*. Those four thraves of every plough-land were, before that grant, payable into the king's avenary¹ by custom of the country. And in *Atthelstan's* charter, as I^k found it transcribed, they were thus expressed,

Da ropne Ʒmaue by heuen cýng
Of ilc a plou of EƷtebding.

And for that more general notion of *decima* or *decimatio*, I have seen the transcript of a deed made by Robert de Hefel to the monastery of Gisfeburne in Yorkshire, wherein he gives duas garbas de tota terra quam de novo colui in territorio de Hefel, postquam illam tenui, aut quam ego de caetero colui, vel haeredes mei, ita ut decimatio haec cedat in fabricationem ecclesiae novae de Gisfeburne. Here the gift of two sheaves is called *decimatio*.

II. FOR the practice of payment among christians, both *Britons* and *Saxons*; Might we believe the common tale of that *Augustine*, the first archbishop of *Canterbury* province, his coming to *Cometon* in *Oxfordshire*, and doing a most strange miracle there, touching the establishing of the doctrine of due payment of tythes, we should have as certain and exprets authority for the ancient practice of such payment, as any other church in christendom can produce. But as the tale is, you shall have it, and then censure it. About the year, they say, bc. *Augustine* coming to preach at *Cometon*, the priest of the place makes complaint to him, that the lord of the manor having been often admonished by him, would yet pay him no tythes. *Augustine* questioning the lord about that default in devotion; he stoutly answered, that the tenth sheaf doubtless was his that had interest in the nine, and therefore would pay none. Presently *Augustine* denounces him excommunicate, and turning to the altar to say mass, publicly forbid, that any excommunicate person should be present at it, when suddenly, a dead corpse, that had been buried at the church-door, arose (pardon me for relating it) and departed out of the limits of the churchyard, standing still without, while the mass continued. Which ended, *Augustine* comes to this living-dead, and charges him in the name of the Lord God to declare who he was. He tells him, that in the time of the *British* state he was *bujus villae patronus*; and although he had been often urged by the doctrine of the priest to pay his tythes, yet he never could be brought to it; for which he died, he says, excommunicate, and was carried to hell. *Augustine* desired to know where the priest that excommunicated him, was buried. This dead shewed him the place; where he makes an invocation of the dead priest, and bids him arise also, because they wanted his help. The priest rises. *Augustine* asks him, if he knew that other that was risen: he tells him, yes; but wishes he had never known him; for, faith he, he was in all things ever adverse to the church, a detainer of his tythes, and a great sinner to his death, and therefore I excommunicated him. But *Augustine* publicly declares, that it was fit mercy should be used towards him, and that he had suffered long in hell for his offence (you must suppose, I think, the author

¹ Videfit Joseph. Scalig. de emendat. temp. lib. 2. & lib. 1. de mirabilibus f. scripturae D. Augustino falso ascriptum &c. in biblioth. Cotton. de quo apud Malmesbur. lib. 1. de gest. pontif. fol. 114. a. ² Fulcardus Dorobornens. de vita de Beveriaco recens ms. in biblioth. Cotton. ³ Dis. in eadem biblioth. ⁴ Charular. ms. monasterii de Giteburne.

* MS. in eadem biblioth.

¹ Fulcardus Dorobornenf. de vita & mirac. J.

meant purgatory) wherefore he gives him absolution, and sends him to his grave, where he fell again into dust and ashes. He gone, the priest new risen tells, that his corpse had lain there above c.lxx years; and *Augustine* would gladly have had him continue upon earth again, for instruction of souls, but could not thereto entreat him. So he also returns to his former lodging. The lord of the town standing by all this while, and trembling, was now demanded if he would pay his tythes; but he presently fell down at *Augustine's* feet, weeping and confessing his offence; and receiving pardon, became all his life-time a follower of *Augustine*. Had this legend truth in it, who could doubt, but that payment of tythes was in practice in the infancy of the *British* church? The priest that rose here from the dead, lived, if he ever lived, about ccc.xxx after *Christ*, and would not surely have so taxed the lord of this manner only, if the payment had not been usually among other good christians here, not taught only, but performed also. Neither need I admonish much of the authority of it: the whole course of it directs you how to smell out the original. Beside the common legend of our saints, it is in some volumes put alone, for a most observable monument; and I found it bound up at the end of the ms. life of *Thomas Becker*, archbishop of *Canterbury*, written by *John de Grandisano*, and it remains in the publick library of *Oxford*. There also you have it related in *Johannes Anglicus's* his *hystoria aurea*, and in the margin are noted to it these words: *Hoc miraculum videbitur illis incredibile qui credunt aliquid Deo esse impossibile. Sed nulli dubium est quod nunquam Anglorum duras cervices Christi iugo se submississent nisi per magna miracula sibi divinitus ostensa.* But let the truth be as it will, I do not believe, that the fable can be found, nor any steps of it, above cccc years old at most. But, to leave such testimony, no doubt can be, but that some practice of payment was here used very antiently, which (beside the devotion to be supposed in christians, and the doctrine of ancient fathers, which very likely wrote here as in other western churches) might be collected, by good probability, out of those laws alone of the *Saxon* times, which questionless were not without some effect, being so often renewed. Neither is the memory of some use of payment here, in these more elder times, omitted in the relics of antiquity. In the ms. life of the *British* saint *Cadoe*, among some laws of his church of *Lhancarvan*, which seem to be attributed to his time, which falls about our *Augustine* or before, one is, *Quicumque decimaverit, debet dividere in tres partes: primam dabit confessori, secundam altari, tertiam orantibus pro eo.* But the author of this whence we have it, wrote not till after the *Norman* conquest. And it is reported also of *Eadbert* bishop of *Lindisfarne*, or *Holy-island*, that he was *elemosynarum* operatione (as *Bede's* words

are) *infignis, ita ut juxta legem omnibus annis decimam non solum quadrupedum, verum etiam frugum omnium & pomorum necnon & vestimentorum partem pauperibus daret*: which words are almost repeated also by *Turgot* prior of *Durham*, that wrote the story of that *bishoprick*. But here no custom of the place or common use is noted, but only a special devotion of *Eadbert*; and for that of *juxta legem*; you must understand it of *Moses's* law. And so is it expressed in the *Saxon* copy of *Bede*, where I read that he did it *aefren & yfret ac*, and that is, according to the law of *Moses*. Neither is the regard in those times had to a tenth, although not yearly, to be paid as for a soul's ransom, to the poor, after the death of every bishop out of his estate, to be here wholly neglected. Out of this regard may be inferred that therein also the tenth was reputed as a sanctified part. And we learn it out of a council held in *decc.xvi*. In *loco famoso*, as the words of it are, *qui dicitur Celichyth, praesidente vero Wilfredo archiepiscopo caeterisque adscendentibus australibus Anglorum episcopis*, which hath this canon. *Jubemus, & hoc firmiter statuimus ad servandum tam in nostris diebus quamque etiam futuris temporibus, omnibus successoribus nostris qui post nos illis sedibus ordinantur quibus nos ordinati sumus, ut quandocunque aliquis ex numero episcoporum migraverit de seculo, tunc pro anima illius praecipimus ex substantia uniuscujusque rei decimam partem dividere, ac distribuere pauperibus in elemosynam, sive in pecoriis & armentis, seu de ovibus & porcis, vel etiam in cellariis, necnon omnem hominem Anglicum, liberare, qui in diebus suis sit servitus subiectus, ut per illud sui proprii laboris fructum retributionis percipere mereatur & indulgentiam peccatorum.* And for the succeeding times of the *Saxons*; we may well conjecture a practice of payment out of king *Knout's* epistle sent in *M.xxxi*, as he departed homeward from *Rome*, by *Living* abbot of *Tavistock* to *Athelnoth* and *Alfrick*, the two archbishops by name, and to the rest of the bishops and baronage of *England*. He therein straitly charges them all, that according to the ancient law they should take care that tythes were duly paid among other church revenues, wherein if he found default, at his coming, they should expect severe punishment: the words were: *Nunc igitur obtestor omnes episcopos meos & regni mei praepositos per fidem quam mihi debetis & Deo, quatenus faciatis ut antequam in Angliam veniam, omnium debita, quae secundum legem antiquam debemus, sint persoluta, scilicet elemosyna pro aratris, & decimae animalium ipso anno procreatorum, & denarii quos Romam ad sanctum Petrum debetis, sive ex urbis sive ex villis, & mediante *Augusto* decimae frugum, & in festivitate *S. Martini* primitiae seminum ad ecclesiam sub cuius parochia quisque degit quae Anglice curcleece nominatur. Haec & alia, si cum venero, non erunt persoluta, regia exaltio-*

^a Ms. part. 2. lib. 17. cap. 72.
Cotton. & apud v. c. Th. Allen, Oxon.

^b In bibl. Cotton.

^c Eccles. hist. lib. 4. cap. 19.

^d Ms. in biblioth.

^e Apud G. Malmesbur. de gest. reg. Angl. lib. 2. cap. 11.

^f Ms. (comp. inter monumenta ecclie. Landav. in biblioth. Cont.) cap. 10.

ne secundum leges in quem culpa cadit districte abque venia comparabit. And the monk that relates it, adds, *nec dicto deterius fuit factum.* But whatever may be out of these testimonies concluded, it is noted among the laws attributed to *Edward* the Confessor, that what through the coldness of devotion, what through the neglect of demanding tythes by the clergy, that were otherwise grown very rich in real endowments, the practice of payment of them was much diminished. *Sed postea instinctu diaboli* (are the words which follow immediately what is before in the chapter of laws, §. XIII.) *multi decimam detinuerunt, & sacerdotes locupletes negligentes non curabant inire laborem ad perquirendas eas, eo quod sufficienter habebant suae necessariae vitae. Multis enim in locis modo sunt tres vel quatuor ecclesiae, ubi tunc temporis una tantum erat, & sic coeperunt minui.* But we are not sure that this addition to the law is as ancient as the Confessor. I think it indeed rather of somewhat later time: yet doubtless the general practice of payment according to those ancient laws, however it might be in elder times, was about the *Norman* conquest, much discontinued, which may be especially observed out of that book of *Domesday*, (the original copy whereof yet remains in the receipt of the exchequer) in which the possessions and revenues both of the clergy and laity were accounted and valued, by the oaths of inquests taken in every county upon commission, and so returned thither about the end of the Conqueror's reign. There, frequently enough, churches are mentioned by the words of *ibi ecclesia & presbyter*, or such like; and how many carves or hides of land, how many villains, and other endowments and revenues belong to them, are reckoned, with their values. But very rarely any tythes among those church-revenues are there found: if none at all had been named, it might have been thought that they had been omitted as a more sacred profit, than was fit to be taxed in such a description. But some, although very few, occur in it: As under *terra Osborni episcopi* in *Bosham* in *Suffex*, you may there find that *decimam ecclesiae clerici tenent, & valet xl.* where the least value of the manor is made at *xl.*¹ per annum. In *Hampshire* under *terra Osborni episcopi*, you read *ecclesia S. Michaelis de Monte tenet de rege in Basingstoches hundred, unam ecclesiam cum x. bida & decimam de manerio Basingstoches. Ibi est presbyter.* So in the same shire under *terra regis; ipse rex tenet Walpole &c. ibi ecclesia, cui pertinent una bida & medietas decimae manerii & totum* ² *curset, & de decima villanorum xli denarii & medietas agrorum. Ibi est adhuc ecclesia ad quam pertinent viii acrae de decima.* For these viii acres of tythes, see before in the chapter of laws §. IX, X, and XI. And in the same shire also among the abbot of *Lire*'s possessions, the tythe of *Cladford* is reckoned, as also of *Adrintone*, and also the tythes of *Stanham* are pos-

sessed there by one *Richerius* parson of the church of *Stanham*; and under *terra canonico-rum* de *Tuinham*, is found, *ad hanc ecclesiam pertinet tota decima de Tuinham, & tertia pars decimarum de Holchest*; and in the isle of *Wight* there vi churches belonging to the abbey of *Lire*, *decimas habent de omnibus redditibus regis.* So in *Bedfordshire* the church of *S. Mariae de Corneliis*, hath divers tythes among its revenues. But the mention of tythes where churches are nevertheless spoken of, is but very seldom through that whole description. And indeed in certain counties, as *Somerset*, *Devon*, *Cornwal*, and some few others, you shall rarely have a parish-church noted, but in others, very often churches are, but very few examples of their having tythes. Sometimes also grants of tythes by lay-owners are there mentioned, out of the use of which it may be well thought that the moieties or third parts of tythes belonging to this or that church, had their beginnings. But thereof more particularly in the next chapter, where we speak of arbitrary consecrations. And in most appropriations of parish-churches made in the *Saxon* times, (the ancient course being to grant, in appropriating *ecclesiam cum decimis*) no mention is of *decimae*, but other possessions of the churches granted are most particularly inserted in the instruments; of which some examples are published in *Inguiphus* abbot of *Crowland*, and very many occur in chartularies of "old monasteries. But see also for this matter the authorities anon brought to another purpose in the fourteenth chapter §. II. For the following age (besides some examples related in the next chapter, out of which some kind of known payment at least, to some churches, may be without difficulty collected) that we may here omit also the divers appropriations, in the ³ times presently ensuing the conquest, of *ecclesiae cum decimis*, which denotes either some payment or interest of tythes settled by consecrations in them. In the life of *S. Cuthbert* bishop of *Lindisfarne* written by some monk under *Henry I.* it is related, that in that author's time a great penury of food being in *Lindisfarne* (that is in *Holy-island*) the sea left upon the shore *lxv* fishes, whereof every one was a sufficient draught for a yoke of oxen; and that a monk came to the lord of the adjoining soil, and desired the tenth of that abundance so sent by the hand of God. *Saltem decimas*, as the words are, *quod legis & provinciae consuetudo exigebat, ecclesiae requisivit, sed omnibus negatis rubore simul & dolore confusus discessit.* Here the practice of payment is noted by *provinciae consuetudo*; And about the same time the fashion about *Abingdon* was to pay the tythes to the abbey (due either as it was an ealder mense by king *Edgar*'s law; or as they had been consecrated; whereof more in the next chapter) by whole hides and acres. *Ibi diebus*, says the chartulary of that abbey, *raro a quoquam decima missum ut lege praecipitur in abbatia ipsa dabatur, sed aut de bidagio xl manipuli quos vul-*

¹ Totum computatur, placet, cartul. Rossensis ecclesiae, ibid.

² I. Church-fee.

³ Ma. in bibl. Cott.

⁴ Aeneas vita vet. monumenta, consule, G

go garbas vocant, aut decima suae culturae acra porrigebantur. And for the time under Henry the second, an epistle sent from Rome by pope Alexander the third, to the bishops of Worcester and Winchester, recites the general institution, which may be understood for custom, of the church of England to be, that every parishioner should pay his tythe corn to his own parish. Cum homines, so it speaks, de Hortuna secundum generalium ecclesiae Anglicanae institutionem, de frugibus suis novem paribus sibi retentis decimas ecclesiae ejus parochiani sunt sine diminutione solvere teneantur &c. Wherewith agrees the preamble of his decretal, remaining yet in the body of the canon law. There he begins with; Quod cum parochiani vestri (that is, all the parishioners within the diocese of Canterbury) decimas bonorum suorum consueverint ecclesiis, quibus debentur, cum integritate persolvere; nunc tam laudabili consuetudine praetermissa quidam ex eis de lana & de feno, & de proventus molendinorum & piscariarum decimas ipsi ecclesiis subtrahere non verentur. Hereto add that of one of his predecessors, Hadrian the fourth, to the archbishop of Canterbury, where a parochial payment of tythes seems to be spoken of as of known right; and in a composition made by the abbot of Evesham, a judge delegate from pope Honorius in m cc. xx. it is taken clear, that certain tythes de jure communi pertinent ad ecclesiam de Leonminster, eo quod sitae sunt infra limites parochiae ecclesiae de Leonminster, according as the texts of the canon law of about that time expressly also affirm. The composition was between some of the diocese of Hereford, and the abbot of Wigmore. Like admissions of that law are in other instruments, in the ledger-book of Reading, for the church of Leonminster. But conclude not out of them for practice, without observation of the examples of the next chapter. And it appears, that in 11 Hen. III. a special grant was made by the king, that tythes of hay and mills should be paid from thenceforth in all his demesnes lands (that is all occupied either by his villains or bailiffs, or by lessees that came in after the grant) which before then had not been paid. Dominus rex, says the record, de concilio archiepiscoporum & episcoporum suorum concessit, ut decimae feni & molendinorum de singulis dominicis suis in regno suo de cetero praesentur. Et mandatum est ballivis de Corham quod de domino suo de Corham decimas feni ecclesiae de Corham dari faciant. T. r. apud Westmonasterium xviii die Maii. And according to this, were divers close writs sent out in the following years. Of the times afterward, we find more certain testimonies shewing the common right of tythes and that parochial; as the writ of indicavimus, grounded upon the statute of circumspicere agatis, made in the thirteenth of Ed. I. discovers, that in and be-

fore that time the parochial tythes were most known revenues of every church; with which agrees the ancient and present form of the count in a writ of right of advowson of a parish-church, wherein the places are chiefly laid in tythes, because the advowson of the whole tythes, is no other than the advowson of the church, as Judge Stoner^c says in Corbet's case. And by the practice of the kingdom, it became clear law, as it remains also at this day, that regularly, if no other title or discharge, to be specially pleaded or shewed in the allegation of the defendant, might appear, every parish had a common right to the tythes of all annual increase, predial and mixed, accruing within the limits of his parish, without shewing other title to them in his libel. That appears frequently in our year-books, where the issues, taken upon parochial limits, are reported. But we may here not untimely remember an occurrence in the petitions^d of the parliament, of 33 Ed. I. touching the tythes of Cornwall, challenged by the parsons and vicars there. De personis & vicariis, says the entry, petentibus decimas in Cornubia; ubi rex solvit annuatim episcopo Exoniensi pro decima praedicta, ita responsum est. Fiat sicut consuevit tempore comitis & regis. The earl and the king there meant, are that great Richard, and Henry the third. But this must not be understood of the tythes generally in the county, although the words might import as much as if the bishop had received them all. It was doubtless for the tythe of the stannaries only. For it is true, that the bishop of Exeter had the tythe of the profits or rent of the stannaries there anciently given and paid him, and thereof testimony enough^e is upon record; and to that purpose also is that marginal note, in the book of those parliaments, flagmen Cornubiae; clearly, that goes for the stannum Cornubiae, as flagminatores for those of the works. For the time of Edward the third and Richard the second, (beside that of the tythes of sylva caedua, or copice-wood, whereof enough before, in the laws that belong to it) you may remember those complaints of Chancer's plowman against the clergy of his age.

Their tything and their offering best
They clemeth it by possession,
Thereof nil they none forgo,
But robben men by ransome.

And then of parish-rectors.

For the tything of a ducke,
Or an apple, or an aye,
They make men swere upon a boke,
Thus they foulen Christes say.

And,

He woul have tything and offering,
Maugre wbessever it grutch.

And in the feres tale,

^b In append. ad concil. Later. part. 4. cap. 4.

^c In regit. mon. Leonmstr. five Reading, in bibl. Cotton. & vide app. ad concil. Lat. part. 47. cap. 1. part. 1. membr. 9. in dorf. & rot. claus. 13 Hen. III. membr. 7. in dorf. & claus. 17 Hen. III. dori. 16. & dorf. claus. 10 Hen. III. membr. 24. & claus. 11 Hen. III. membr. 10.

^d Vide rot. fin. 4 Hen. III. membr. 1. & claus. 5 Hen. III. membr. 6.

^e Extr. tit. de decimis c. 5. pervenit.

^f Rot. claus. 11 Hen. III.

^g Ibid. c. 4. commissum est.

^h Rot. claus. 11 Hen. III.

ⁱ Rot. claus. 10 Hen. III.

^j In co. l. v. m. sp. 4 v. c. J. Burough.

^k 22.

And

And small tythes they were soule yshent

before the archdeacon. To these, for personal tythes, you may add that of mortuaries, payable in beasts regularly, before the statute of 21 Hen. VIII. which were reputed due upon the general presumption of every defunct's negligence in payment of his personal tythes. The mortuary was therefore, by the canons, to be presented with the body at the burial, as a satisfaction of omission, and negligence in paying to the church those personal duties. And thence was it stiled *corse-present*; according whereunto, I have seen a justification in the cure of Derby, of 4 Ed. III. to an action of trespass brought by Thomas of Gonsill against the parson of Wbitwell, for the taking of a horse; in which the defendant pleads, that it was the horse of one J. Leyer, his parishioner that died, *et que le dit cheval ensemblement une autres choses fust mesmes & present al eglise come en nosue de mortuarie devant le corps mesme le jour, &c.* Et il come parson les prist & rescent auxi come custume de la terre & de saint eglise est, &c. These shew plainly the received and acknowledged parochial right, in the practice of those times, which hath to this day continued. Neither is it at all necessary to add more for the uniform continuance of it. Saving only, that where any statute hath made a discharge, or prescription, or custom hath settled a *modus decimandi*, or certain quantity payable, though never so little, for the tythe; there, by the laws of the kingdom, the owner is not bound to pay other tythe, than the statute or custom or prescription binds him to. Which yet must be so understood in the case of laymen, that custom or prescription founded in their possessions as lay, cannot wholly discharge the tythe, or be *de non decimando*, but may well be *de modo* only; otherwise is it in the case of spiritual persons, that may by the common law be by prescription wholly discharged and prescribe *de non decimando*. And this is regularly clear law. But at what time this parochial and common right became first settled with us in practice, is not so clearly known. And though those decretals, before cited, suppose it a thing of custom here in Henry II. his time; yet if credit might be given to the report of those English monks, which, as we have before related, referred the ordaining of parochial right in tythes to the general council of Lions, held under Gregory X. then we might conclude the right of it no antienter than about the beginning of our Edward I. But whatever they meant, it is certain, that some, both synodal and secular laws of this kingdom, had, before that time, ordained this right. Yet indeed it will be found, that the practice of it here, as also in other countries, was not settled till some m.cc. years after Christ, or, at least, was, for many years before, and some after, discontinued. Which may partly be collected out of that decretal of pope Innocent III. sent into this kingdom, and dated in the Lateran; which is be-

fore at large in the chapter of laws, §. xxiii. For however the recitals are in those of Alexander III. (the one speaking of *generalis institutio* for parochial payment, which, as it may denote common custom, so also may be understood for some law of the kingdom, as that of Edgar's, Knout's, the Confessor's, or some other before lated; the other, of *consueverint ecclesius quibus debetur*, which doth not of necessity include a general practice of parochial payment, but may as well denote the duty that comes from arbitrary consecrations; of which, in the next chapter) it is most certain, that before, about the year m.cc. after Christ, that is, about the time of king John, it was most commonly practised by the laity, to make arbitrary consecrations of the tythes of their possessions to what monastery or church they would, sometimes giving half, sometimes a third part, and at their pleasure all, in perpetual right, or otherwise, according to the nature of those consecrations in other countries; of which, enough is before related. Neither doth exprels testimony hercof want in that decretal of Innocent III. made against these kind of arbitrary consecrations. *Multi*, saith he, *in dioecesi tua* (that is the province of Canterbury) *decimas suas pro sua distribuunt voluntate*. Neither may you understand it, as if it had been done by the wayward opposition of some only against the received and allowed laws of the kingdom. For notwithstanding all those ordinances, both secular and synodal, antiently here made for due payment, it is clear, that in the time before about that Innocent, it was not only usual, in fact, for laymen to convey the right of their tythes, as rents charge, or the like, to what church or monastery they made choice of, but by the course and practice of the law also of that time (both common and canon, as it was here in use) such conveyances were clearly good, and what was through them so acquired, was continually, and is to this day (except some particulars, which either the pope's authority of later time, or new compositions or grants, or the like, have altered) enjoyed by the churches, that, yet remaining, had portions so antiently given them, or by the king or his grantees of impropriated tythes; very many of which had their chief original from those arbitrary consecrations (which you may well call appropriations of tythes) and not from the appropriating only of parish churches, as some out of gross ignorance, with too much confidence, deliver. But thereof you may see more in the examples of the next chapter; where, for most apparent proof of the practice of arbitrary consecrations in those times, monuments enough are collected. This arbitrary disposition, used by the laity as well *de jure* (as the positive law, then received and practised, was) as *de facto*, is that which Wickliff remembered in his complaint to the king and parliament under Richard II. His words are: *A Lord God, where this be reason, to constrain the poor people to find a worldly priest, sometime unable*

* Lindw. tit. de consuetudine, c. statum, lit. f. & 21 Hen. VIII. cap. 6.

* Why is this reason, or is this reason,

both of life and cunning, in pomp and pride, covetise and envie, glotonie, drunkenesse and lecherie, in simonie and heresie, with fat horse, and jolly and gay saddles and bridles, ringing by the way, and himself in costly clothes and pelure, and to suffer their wives and children, and their poor neighbours, perils for hunger, thirst, and cold, and other mischiefs of the world? A Lord Jesu Christ, sit within few yeeres, men payed their tythes and offerings at their own will free to good men, and able to great worship of god, to profit and fairness of holy church fighting in earth. ° Where is were lawful and needful, that a worldly priest should destroy this holy and approved custom, constraining men to leave this freedom, turning tythes and offerings into wicked uses? But what he calls a few years, will fall out to be about cc. for he wrote about the year M.ccc.xc. With him well agree some passages in our year-books of the times before him. As in 7 Ed. III. fol. 5. a. *¶ Parning truly affirms, that in ancien temps devant un constitution de nouvelle fait per le pape, un patron d'un esglise puit grantier dismes, deins mesme le parochie a un autre parochie.* And Herle there in his answer, seems to admit it clear. So also, touching others as well as patrons, Ludlow, judge of assize in 44 Ed. III. fol. 5. b. *En ancien temps chescun home pourroit grantier les dismes de sa terre a quel esglise il voudroit. Quod verum est, says judge Brook, in abridging the case.* But what new constitution of the pope is meant there by *Parning*? Some later books tell us, that from the council of *Lateran* the first alteration of that course of arbitrary disposition came. But plainly, no council of *Lateran* hath any canon that altered the law in it, except that under *Alexander III.* before spoken of in the end of the sixth chapter, may have place here; which, indeed, the canonists will not endure, unless you restrain it only to antient feudal tythes. And they suppose, every man might have arbitrarily conveyed, before that council, his feudal tythes to what church he would. And so expressly says our *Lindwood. Ante illud concilium bene potuerunt laici decimas in feudum retinere & eas alteri ecclesie vel monasterio dare; non tamen post tempus dicti concilii.* But if those which with us talk here of the council of *Lateran*, mean, that under *Alexander III.* and apply it generally to arbitrary consecrations of new tythes, not feudal, I doubt they are much nearer the true meaning of that council, than any of the canonists; especially while they speak of this kingdom. For arbitrary consecrations before about the time of that council are found here infinite, as presently shall be shewed. But of antient feudal tythes (however they were common in other states) scarce any mention at all, or taste is with us: but thereof more in the xiiij. chapter. And, it may be, that when, from the canonists, some of our lawyers had learned that feudal tythes might have been conveyed before that council arbitrarily by the

owner; and saw withal, that scarce any sign was of feudal tythes in this kingdom, yet an abundance of old arbitrary consecrations, the use whereof ceased about the time of the council; in the words of it no regard or mention being had of feudal, but only tythes in general; they concluded, (who sees enough why they might not?) that before that council, every man might have arbitrarily disposed of his tythes, that is, such tythes as were not formerly settled by any civil title. But if this will not be allowed for the law of change of those arbitrary conveyances; why may it not first be that *Parning* by his constitution de *nouvelle fait per le pape*, meant that of pope *Innocent III.* sent to the archbishop of *Canterbury* in king *John's* time (and perhaps it was soon after received into the province of *Tork*, either by imitation or through the power legatin, which the archbishop of *Canterbury* commonly exercised through the whole kingdom) to command a parochial payment? For also by the name of a constitution newly made by the pope, some such thing rather than a canon of a general council is perhaps denoted. And then why might it not happen that the decretal of *Innocent III.* bearing date in the church of *Lateran* should be thence denominated, and that afterward those which truly understanding it, called it therefore a *Lateran* constitution, gave cause of mistaking to others that took it for a constitution of a general council of *Lateran*? Especially too, because it was about the time of the general council of *Lateran*, held under the same pope that sent it, of which more notice hath been taken in our law than of any other of that name. And indeed he that affirms, that before the council of *Lateran*, lay-owners might have disposed their tythes, *cuicunque ecclesie secundum meliorem devotionem*, as *Dyer's* words are, speaks true enough, if his words may receive this easy interpretation; that is, that till about that council of *Lateran* they might have done so; not that the council under pope *Innocent* restrained it, but that either the next council of *Lateran* before, that is under *Alexander III.* or the pope by a constitution, received here from *Rome* and dated in the church of *Lateran*, about the time of that council of the year M.cc.xv. ordained the contrary: So that in this last way, the name of the council may be a note only of the time about which it was restrained, not of the authority whence it was forbidden. Perhaps those canons of pluralities, of exemptions, of the three orders, and some such more which we received from that council under *Innocent*, were brought into *England* at once with this decretal epistle; And if so, then also it was no more strange to have the decretal afterward titled by the name of a constitution of the *Lateran* council, than it happened in the denomination of the statutes of *aide de roy* and *voucher*, made in 4 Edw. I. every of which are stiled by the name of *statutum de bigamis*: yet only one law de *bigamis*, received out of the general council of *Lions*, is among those

° *Wily it is lawful.*

de locat. & conduco c. licet. verborum portiones.

¶ Vide 10 Hen. VII. fol. 17. 2. 7 Ed. VI. *Dyer* fol. 84. b. & Coke report. 2. fol. 44. b.

¶ Quam vide sup. cap. 8. §. 23.

¶ *Tin.*

statutes; and that is even as much a stranger to the rest of the constitutions bearing the same name with it, as pope *Innocent's* decretal was to the whole council of *Lateran*. However, it is most clear (let forward ignorance as it can continue to oppose the assertion) that for cc. years at least before, about the time of the council of *Lateran*, held under the same pope, arbitrary consecrations of tythes with us were frequent, and practised as well of positive right (if we may take that for right, in things subject to human disposition, which general consent of the state allowed; as no man that knows what makes a positive right, can deny) as of fact; which because they are best conceived of by the particular testimonies and precedents of them, in the following chapter many shall be transcribed, that are all (except one or two in the province of *Tork*; neither is it likely that in every place here, and by every man the intent of that constitution was suddenly observed, and perhaps also it was not so soon altered in *Tork* province, as in this of *Canterbury*, in regard that the decretal was sent only to *Canterbury* province) of the time before that decretal, and taken out of the most choice and authentick monuments, that may afford help to the disquisition of this point so little, so not at all vulgarly, or indeed any where publicly discovered.

CHAP. XI.

- I. *Arbitrary consecrations of tythes (before about the time of the most known council of Lateran) by conveyance from the owner of all or part to any church or monastery at his pleasure, in examples selected out of monuments of infallible credit.*
- II. *As writ in the Register intelligible only from those arbitrary consecrations. A like example to it out of the book of Osney.*
- III. *The liberty of the baronage antiently challenged to build churches in their territories. Parochial right to tythes settled in practice.*
- IV. *Of tythes of increase in lands not limited to any parish. How by the common law they are to be disposed of.*

BESIDES the many testimonies that may be had out of the portions, especially possessed by some churches or monasteries, many of which had no other beginning than from arbitrary consecrations, made by owners of tythes, in two parts, or third parts, or otherwise at their pleasure to any church or monastery; the frequent memory of instruments of such consecrations (made according to the practised law of the time chiefly interceding from the year *m.* till some years alter *m.c.c.* of our saviour) is to be principally observed in this disquisition. The original monuments of those elder ages afford us

plenty of them. And in regard of the easier connexion and more compendious way of delivery, we shall rather severally follow the singular courses of every of the chartularies or other monuments, which tell us of those kind of consecrated tythes, than dispose together every arbitrary consecration according to the order of time. The several titles of books whence we have them shall chiefly direct in the general order; but neither shall the particular time, of every of these selected examples of consecration be omitted.

I. The chartulary of the abbey of *Abingdon* shall obviously have first place. In it, in the time of king *William II.* and *Rainald* abbot, occurs, that,

Vivente praedicto *Rainaldo* abbate, trium decimationum, ecclesiae huic facta est una ab *Herberto* de villa sua *Lakine*, appellata *Henrici de Ferrariis* * milite; scilicet frugum, agnorum, calceorum, vitulorum, & porcellorum. Quod & *Robertus* filius ejusdem post patris mortem confirmans, concedente domino suo praedicto *Henrico*, *Abendoniam* venit, pro patris & sui suorumque salute praefatam hic decimationem perpetualiter tradidit; sibi fratribus suis germanis *Huberto* & *Stephano* in his faventibus; etiam istis amicis suis videlicet *Quairo* de *Mocnair*, & fratre ejus *Hugone* & *Roberto* filio *Aldulsi* de *Betretuna*. Altera a *Seswaldo* de villa sua *Hildesca* calceorum scilicet & vellerum suarum ovium. Quod & haeres & filius ejus *Frogerus* post eum devote confirmavit. Quae utraque decimationes luminariis & ministris altaris sanctae Mariae ab eo die specialiter delegatae hucusque in hoc expendantur. Tertia a *Roberto* cujus erat cognomen *Marmion*, & a filio ipsius *Helto*, de villa sua *Henreda*, frugum omnium suae propriae lucrationis. Sed & post illos a *Radulfo* cognomento *Rosel* idem concessum. And then follows *Rosel's* charter to that purpose: Ego *Radulphus* agnomento *Rosellus* concedo volo atque praecepto servientibus meis ut segetes meas de *Henredis* decimam ad osium granciae meae quae ibidem habetur, & ipsam decimam recte & fideliter servienti S. Mariae deliverent.

And this tythe was in the sole disposition of the almoner of the abbey. Out of four hides also lying in the same *Henreda*, a consecration of the tythe had been made before in the time of the *Danish* government, by a *Dane*, and is thus there reported.

Tempore Danorum, fuit quidam eorum qui possidens vii. hidas in *Henreda*, propter vicinitatem *Abendoniae* & amorem S. Mariae virginis & aliorum sanctorum qui mihi digniter coluntur, dedit decimam de dominio ejusdem terrae ecclesiae S. Mariae *Abendonensi* in elemosynam pauperum, hoc est de iii. hydis; quam terram *Helto Marmion* Deo & sancto Stephano Cadomi dedit. Ecclesiae vero *Abendonensi* decima de dominio praedicto in aevum permanfit.

* In bibl. Cottoniana.

* L. m. lib.

Then follows a charter of *Henry I.* wherein all the grants of lands, churches and tythes, made, or thence after to be made by *Alberick de Ver* and *Beatrix* his wife; their son *Alberick* and his brothers, or by their tenants to the monastery of *Colme in Essex* (which was a member, or as a cell of *Abingdon*, and erected by *Alberick* their father) are confirmed; and in them two parts of the tythe *de omnibus rebus* in the manors of *Hethingham, Belbeam, Laureham, Aldeham, Duurecort, Bonecleide*, and *Rodiges*, and half of the tythe of *Walde* and *Wadane*, are recited to have been conveyed to the same monastery, *et dimidia decima Decimblanc de Cola, & tertia pars decimae Ranulfi magni*. This is dated 11 *Hen. I.* at *Reading*, that is, MC.XI. And *Faritus*, abbot of *Abingdon*, as it is further remembered, at *Colme*, solemnly received investiture or leisin of every of those and other possessions so granted by the hand of *Picot*, sewer to *Alberick de Ver*, with the testimony of his wife, children, and many of his tenants. And the patent of *Henry I.* is there extant, wherein *tota decima de venatione quae capta fuerit in foresta de Windesore*, is granted to the abbey, which was after confirmed by *Henry II. Richard I.* and others. In the same chartulary, about the beginning of the same *Henry*, the tythes of *Bulkei* of *Cildesum*, are given to the abbey by *William* of *Sulabam*; in *Hanney* by *Osbern* and *Turold*; of *Offington* by the tenants there; of *Wekenfeld*, by *William* of *Weckenfeld*; of *Eton* by *Roger Fitz-Alured*; and divers such are related, and the words of the most observable passages touching them shall be here inserted.

Anno v. regni *Henrici* regis intrante (*says the book*) *Willielmus* de *Sulabam* dedit Deo & sanctae *Mariae* & abbati *Faritio* & monachis in *Abbondona* decimam villae suae quae *Bulbea* vocatur, die videlicet assumptionis ejusdem *S. Mariae*. Eodem etiam die confirmavit donum de alia decima quam antea dederat de villa *Cildesuna* quae ad hereditatem *Leodselinae* privignae suae pertinebat, ipsa puella coram monachis concedente donum, & cum ipso *Willielmo* & cum matre sua super altare idem imposuit, coram his testibus; abbate praedicto & omni conventu, *Johanne* fratre conjugis ejusdem *Willielmi*, *Humfrido* ejusdem milite, *Hugone* *Conred*. But that of *Turold* is thus expressed. Similiter *Turoldus* de eadem villa (*ibid. is*, *Hanney*) dedit Deo & sanctae *Mariae* de *Abbondona* coram *Faritio* abbate & omni conventu, in capitulo, decimam omnium suarum possessionum, porcellorum scilicet agnorum, vellorum. Sed decimam carucae suae tantummodo ita discrevit, ut duas istius decimationis partes huic loco, tertiam vero partem presbytero sibi servienti concederet; hoc idem concedente & confirmante uxore sua *Hugulina*, & filio suo *Willielmo*; & hanc donationem donavit anno v. *Henrici* regis.

Here especially you see as well arbitrary division as consecration of the tythe by the owner's grant. And for the example of the tythes of *Offington*, the words of it are most observable alio.

Eodem anno (*says the monk that wrote it*) cum venisset abbas *Faritius* in villam suam *Offentunam*, ut opus ecclesiae quod ibi lapideum a fundamento inchoaverat ad perfectum determinaret, congregaverunt se homines sui ex eadem villa, & obtulerunt communi devotione & concessione decimam suam totius villae ejusdem, *S. Mariae* & ipsi abbati & loco *Abbondoniae* ab illo in reliquum tempus. Ut videlicet abbas de suo proprio ecclesiam ejusdem alacrius construendo perficeret, & ipsi mererentur in fraternitate loci annumerari. Hanc expetitionem cum abbas audisset, inquisivit utrum ecclesiae ejusdem villae antiquitus decima ab illis hominibus daretur; nolens scilicet eam sua ceteritudine minuire pro alicujus donatione sui suoque loco oblata; dictumque est, hoc effic moris villae ut a singula virgata ecclesiae illi *xxiiii* garbae pro decima numeratae donarentur. Quod sciens abbas, statuit ante ipsos homines ut, sicuti ipsimet volebant & obtulerant, reciperet eorum decimam, ea determinatione assignata inter ipsum abbatem & ecclesiam ejusdem villae, scilicet, ut tempore colligendarum decimationum abbas ipse mitteret *Offentunam* quem vellet de suis, & ipse reciperet a singulis, secundum singulorum possessionem, rectam decimationem, & post illam totam collectam, de singula virgata illius villae tot manipulos presbytero illius ecclesiae tribueret quot superius diximus ei deberi. Reliqua vero decimationis abbati servaret.

Here plainly, no tythe was parochially paid before this grant, but only twenty four sheaves of every-yard land; which was now diminished also by the consecration of the true tythe to the abbey. Then *Willielmus* de *Weckenfeld* dedit suam decimam ex omni sua pecunia *S. Mariae* & monachis in *Abbondon* de tribus videlicet *hidis* in *Weckenfeld*, & duabus de *Boxore*, excepta una acra quae ecclesiae de *Boxore* adjacet. This was in 7 *Hen. II.* And in the relation of the tythes of *Eaton*, granted to the abbey by *Roger Fitz-Alured*, it is added; *Et promisi quod cum Osmundo & aliis suis hominibus de illa villa faceret ut & ipsi de suo tenore similiter decimam ecclesiae huic concederent*. So in 9 *Hen. I.* *Aldred* & *Laured* homines ecclesiae de *Waliford* dederunt monachis hujus ecclesiae decimas de omnibus videlicet suis pecoribus, & de agrorum suorum cultura, in capitulo coram toto conventu. And in the same year, one *Ralf* gave them the tythe of his farm or manor of *Bradendene*, and assured them, he would intreat *Robert de Insula*, his lord of whom he held *Bradendene*, quatenus illius permissione & concessu suo loc confirmaret, ut haec ecclesia ipsius decimae donatione firmius in posterum potiretur. The like gift occurs there, made by *Hugh Fitz-Wichtigar* in 10 *Hen. I.* of the tythes of *Bennabam*. And about the same time, *Gilbert Basset* gave for ever to the abbey, with his son *Robert* entering there into religion, the tythe of his land in *Waneting*, to be employed ad usum pauperum. Not long after, *Hugo dispensator regis* (it seems, treasurer of the household) granted to the abbey, suam decimationem de omni pecunia tam de mobilibus rebus quam

quam immobilibus de manerio Spesholt quod de ecclesia tenebat, sua conjuge Helewita favente, coram his testibus; Poidras suo homine, & Anselmillo suo praeposito de praedicta villa, & multis aliis. The like did Ralf the abbot's chamberlain grant out of two hides in *Steringsford*. So one *Jocelin* and his son *Randal* granted to the abbey two parts of all kind of tythes in possessione quadam quae Grava dicitur. And one *Norman*, when his son *Eudo* there took habit of religion, consecrated with him decimam domini sui de Winterburne, quam cui placeret ecclesiae libere donare poterat, quae sic concessa sub manus sacristae redacta est. And among other possessions of the abbot and convent, confirmed by the bull of pope *Eugenius* the third, in the year M.C.LII. (that is, in XVII of king *Stephen*) these tythes granted, are particularly reckoned in it, as part of what they did in praesentiarum iuste & canonice possidere; so are the words of the bull. Neither to other purpose are the words of the bishops of *Salisbury*, ordinaries of the diocese, in their general confirmations of churches and tythes to the abbey. These confirmations of theirs came divers years after the grants made by the owners, and are at large extant in the chartularies of the monastery. The first that made any, was *Hubert*, who was consecrated bishop in 1 *Rich. I.* that is, M.C.LXXXIX. In the time of *Henry* the second, through the procurement of *Richard* sacristan of the abbey, one *Giralin de Curzan* granted to the abbey, decimam xxx acrarum de Westlakinge quam parentes sui prius concesserant, & ipse altari sanctae Mariae concessit, addens de porcellis sive agnellis aut caseis aut rebus aliis quae decimari solent, decimam, quam priores sui minime dederant. Hanc vero donationem super altare S. Mariae devotus obtulit; trium tantum acrarum decima de xxx ecclesiae de Waneting reservata. Then, for tythes in *Chiltune*; it is there reported, that in 2 *H. II.* *Nicholas Fitz-Turvald* gave them to that monastery: His whole charter is recorded, and so take it here for that part transcribed. Notum sit praesentibus & futuris testimonio hujus scripti sigillo meo signati, quod ego *Nicholaus filius Turvaldi* de Estuna pro salute animae meae parentumque meorum, & pro eo quod licitum mihi esset ab ecclesia de Abbendona coemiterium habere capellae meae de Winterburna, concessi firmiter & finaliter dedi praedictae ecclesiae Abbendonensi, singulis annis imperpetuum habendas decimas terrae meae quam in dominio meo teneo in villa *Chiltune*. In blado scilicet ad ostium grangiae meae suscipiendo & in caseis & in vellibus & agnis & porcellis, & in omnibus quae decimari solent. And at the time of the grant, it was by the abbot *Ingulph* assigned to the use of the poor and strangers, that is, to the almonry, as indeed most other of their consecrated tythes were: which is yet to be seen in the accompts of the revenues of every office of the houle.

Out of the chartulary of the abbey of Osney.

The abbey being founded in 29 *Hen. I.* that is, in M.CXXIX. by *Robert d'Oily* high constable of England; in the charter of the foundation are given to it the tythes of the founder's mills, that were near the castle of Oxford, & decimatio *Nicholai* de Stodcham quam *Fromundus* (a chaplain mentioned in the charter) tenebat: and that is iterated often in other charters to the same monastery. And after in the same chartulary is a catalogue of divers portions of tythes belonging to the abbey, and as issuing out of the demesnes of such as had encreased the revenues of it with endowments of tythes newly granted; nor are they expressed with any reference to this or that parish, but only to the demesnes and names of the donors. And then comes a confirmation of *Richard* bishop of *Lincoln* (within that diocese *Oxfordshire* was, till the later institution of a bishopric in *Oxford*) wherein, among the antient possessions of the abbey, enjoyed through their having *Saint George's* church in the castle by *d'Oily's* gift, two parts of the tythes of all things quae decimari solent, in dominio bonum maneriarum, videlicet, *Berecencetre*, *Erdinton*, &c. are confirmed to it. Neither is the number of those manors there named, under forty. Which way is it likely, that the church of *S. George* came to two parts of the tythes of so many manors, if not by consecration of the owners? And indeed afterward is a transcript of a charter of *Robert d'Oily's*, that was above c.x. years before the bishop's confirmation, to the abbey, wherein he gives three hides in *Walton*, and terram de *Twenti* acre & decimam ararum terrarum, & pratum quod vocatur *Brunmannes Mead*, cum decima ejusdem prati (where note, the land and the tythe of the same land is given, which could be but a discharge of tythes in the abbey) & cum decima de *Northam*, *Wiveleya*, & *Linha*, & omnium terrarum & pratorum & aliarum rerum decimabilium quae sunt inter castellum *Oxoniae*, & *Hemteleyam* aut *Botleiam* scilicet in comitatu *Oxoniae*. And then, duas partes decimae, de omni re quae decimari solent, de omnibus dominicis utriusque honoris qui adjacent castello *Oxenefordiae*, videlicet de *Hokenorton*, *Swerefordia*, *Bereford*, *Wiginton*, &c. with a recital of above forty towns and manors, which are also in that confirmation long after made by the bishop. In the same book, *Richard* of *Dodeford* gives them in perpetual right, the tythes de assarto bosci mei de *Hecholthe* cum assartatus & excultus fuerit, sive ego sive alius per me illum assartaverit & excoluerit. This seems to be of about king *John's* time. And one *Hugh de Croftes* grants them decimas domini mei de *Waureton* de omnibus rebus quae decimari possunt & debent, tenendas de priore & monachis de *Tedford* imperpetuum, sicut cartae utriusque monasterii inter eos factae testantur. And this was in 3 *Rich. I.* And a

* In biblioth. Cotton.

* An. Dom. 1219.

* Wincey.

pension was yearly payable for them to the prior of *Thetford* by that clause of *tenendas*, as appears in the confirmation made of the same charter by *William* bishop of *Hereford*. You must know, that the ancestors of *Croftes* had formerly given those tythes to the prior of *Thetford*, as is remembered there also.

*Out of the chartulary or * leiger-book of the priory of Gisburne or Gisburgh in the North-riding of Yorkshire.*

In a fine there of 23 *H. III.* between *Peter de Brus* demandant, and *John* prior of *Gisburne* tenant, it appears, that when *Robert de Brus*, ancestor of *Peter*, under king *Stephen*, founded the monastery; he by grant endowed it, among other possessions, with the tythe of his demesnes of *Litburn*. And in another of 26 *Hen. III.* the concord hath these words in it, & *similiter idem Petrus concessit pro se & haeredibus suis, quod idem prior & successores sui habeant in parochiis suis decimam venationis suae & haeredum suorum; & focorum suorum ubicunque focuum salcabitur, praeterquam in locis subscriptis, scilicet in parco sub castro de Danby, & in iv laundis in foresta de Danby, scilicet in launda de Soresby, Eskebriggethwoyt, Karlethwoyt, & in launda sub Threlkeld, & in haya de Skelton clausa ex aquilonali parte de Routhelinc, & in parvo parco circa castrum de Skelton, in quibus locis nullas decimas foeni habebunt.* That of the tythe of venison, taken within the parishes of the priory, was confirmed in another fine of 30 *Hen. III.* levied before the justices of *Eyre* in *Yorkshire*; and therein also was further added, *concessit etiam idem Petrus pro se & haeredibus suis, quod ipsi de caetero reddent singulis annis praedicto priori & successoribus suis & ecclesiae suae praedictae decimas molendinorum suorum in parochiis suis existentium imperpetuum.* So that if the mills were in lease, the tenth of the rent was payable; if in the hands of the grantor, or his heirs, the tenth of the multure; and for true payment, the millers were, by the concord of this fine, bound to do scalty to the prior and his successors. But I have not seen an example of such disposition of tythes so late time. Few or none else, I think, exceed the year of that constitution of *Lateran* before spoken of. And remember, that this is of *Tork* province, in which perhaps the decretal sent to *Canterbury* had not such effect till somewhat after, as is before touched.

Out of the chartulary of the monastery of S. Andrew's of Rochester.

Henry I. gives to the monks there divers churches with tythes, & dimidiat decimam meam de Tarentford in annona tantum, & totam decimam meam de Strodes, & totam decimam meam de Chealches, & hoc facio pro anima patris mei & matris meae & pro anima mea & uxoris meae. T. Eudone dapifero & Haymone dapifero apud Rovecciam. Other tythes

*of whole manors he gave also to them, & decimam * b. lenarum quae captae fuerint in episcopatu Rossensi. And about the same time Ralph archbishop of Canterbury by charter gave them totam decimam de meo dominio, & omnes decimas omnium villanorum qui habent terram in Dune, necnon & aliorum omnium, quorum decimae meo tempore adquisitae sunt vel quocunque tempore adquirentur. Many other charters are in it to like purpose, as: Ego Willielmus de Albineio pincerna regis concedo Deo & Sancto Andreae de Rovecceria, & monachi ejusdem loci, totam meam decimam de villa mea quae vocatur Elbam in omnibus rebus, scilicet de blado & de pasnagio, & de molendinis, & de pecudibus, & de lana, & de caseis &c. & medietatem decimae de Bisfintune in omnibus rebus pro anima domini mei Willielmi regis, & Henrici regis, atque pro anima mea, & patris mei, & matris meae, & uxoris meae, & fratris mei Nigelii, & nepotis mei Humfridi, & aliorum parentum meorum vivorum atque mortuorum. Testibus militibus meis, Nigelio de Wast, &c. That d' Aubigny was earl of *Chichester* or *Sussex* or *Arundel* (for all these titles he used) and divers confirmations were afterward by his successors, of this grant. And king *Henry* the first also confirmed this of the first *William*; and the prior and convent not long after made a lease of that their tythe in *Bisfintune* to one *Gilebert de Perieres* for 11 years, reserving half a mark rent, payable at *Easter*. And this was confirmed by the archbishop of *Canterbury*.*

Roger Bigot earl of *Norfolk* under *Richard* the first, and *William* his younger son, had given divers revenues to the priory, and among them occur the church of *Waltham*, and then by itself, *tota decima villae Waltham de omni re & tota decima molendinorum ad eandem villam pertinentium.* This is related in the confirmation of *Hugh Bigot* earl of *Norfolk*, and son to *Roger*: and some other churches were granted, but no tythes mentioned with them. And afterward the first charter of *Roger's* grant is in the same volume at large. The tythes of *Bugeley* were given to the priory by the ancestors of *Osbert de Cappavalle*, and charged with three shillings yearly rent, payable to the monks of *Colchester*. This instrument there remaining shews it. *Notum sit omnibus, as the words are, quod ego Osbertus de Cappavalle & Adeliza uxor mea, & Humfridus privignus meus & haeres patris sui, accepta societate Rossensium monachorum pro amore Dei & Sancti Andreae, & salute animae nostrae, & omnium parentum nostrorum, concessimus eis omnem decimam de Bugeleia, sicut eam antecessores nostri in elemosynam dederunt, firmiter & stabiliter, & quiete perpetuo tenendam; reddituris inde annuatim monachi de Colcestr. tres solidos quamdiu eandem tenent & habere poterunt, & hanc concessionem nostram praesenti sigillo confirmavimus, &c.* This was afterward confirmed by *Philip of Leiburn* and his wife *Anne*, and *Robert* of *Leiburn* tenants of *Bugeley*.

* In biblioth. Cotton.

† In scriptis dioc. bibliotheca,

‡ Haec n. capae regis sunt. praerog. reg. cap. 11. &c.

The tythe of *Gedding* was thus granted by the ancestors of *Payn*, Sheriff of *Surrey*. Notum sit omnibus praeſentibus atque futuris quod ego *Paganus vicecomes* *Surregiae*, do & concedo decimam de *Geddinges* quam antecessores mei dederunt Deo & ecclesiae *S. Andreae* de *Rovecestria* pro anima patris mei & matris meae, & pro me & uxore mea. Et mihi concessum est ab eadem ecclesia quod post obitum nostrum singulis annis anniversarium mei & uxoris meae in perpetuum persolvetur.

The tythe of *Stalefield* is granted to the monks by *D. de Monei*, and sic tenendam sicut tenuerunt de antecessoribus meis.

In 8 *Hen. I.* half the tythe of *Halegele* was given to them by *Henry de Port*, the other half being before conveyed to them.

—Decimam totam de *Halegele*, de qua (*so speaks the charter*) praedictus sanctus, that is *S. Andrew*, dimidiam partem habuerat, caeteram vero pro amore *Radulphi* episcopi, ut praedictum est, supra taxato tempore donavi.

These others also follow.

Walebelinus Maniot omnibus sanctae matris ecclesiae filiis tam posteris quam praesentibus salutem. Notum vobis facio quod decimam de dominio de *Bertricea* quam pater meus pro salute animae suae & suorum, ecclesiae *Roffensis* & monachis ibidem Deo servitibus in perpetuum elemosynam dedit, me similiter pro redemptione delictorum meorum & uxoris meae, & haeredum meorum concessisse & praesenti scripto confirmasse. Quod si aliquid de praedicto dominio in rusticanam servitum translatum est vel fuerit, decima tamen secundum primam donationem integra permaneat. Teste *Rodberto* de *Binham* presbytero, &c.

Omnibus sanctae matris ecclesiae filiis ad quos praesens scriptum pervenerit, *Adam Pincerna* aeternam in domino salutem. Noverit universitas vestra quod ego *Willielmus de Lamualai* divinae pietatis intuitu pro salute animae meae & uxoris meae, & liberorum meorum, & antecessorum meorum & successorum, concessi & hac praesenti carta mea confirmavi Deo & ecclesiae *S. Andreae* & monachis *Roffensis* in puram & perpetuam elemosynam, medietatem totius decimae de dominio meo de *Henbersl* quam antecessores mei eis dederunt & concesserunt; tenendam & habendam bene & in pace libere & quiete de me, & successoribus meis, & per manus elemosynarii eorum in usus pauperum distribuendam; ideoque volo & firmiter praecipio ut praedicti monachi habeant, &c.

Omnibus sanctae matris ecclesiae filiis ad quos praesens scriptum pervenerit, *Adam Pincerna* aeternam in domino salutem. Noverit universitas vestra, quod ego *Adam Pincerna* cognita & comperta dilectione quam antecessores mei habuerunt erga ecclesiam *S. Andreae Roffensis* & monachos in eadem ecclesia Deo servientes, decimam de dominico campo meo in *Culinges*, qui vocatur *Westbroc*, quam *Radulfus Pincerna* eis dedit intuitu Dei, praedictae ecclesiae, & *S. Andreae*, praefatis monachis in puram & perpetuam elemosynam concessi & praesenti carta mea confirmavi, ita vide-

licet quod *Richardus* frater meus, qui successit *Gervatio* decano in personatu ecclesiae de *Culinges* ad praesentationem meam, successores sui reddent annuatim, nomine decimae illius, praefatis monachis dimidiam marcam argenti in crastino festivitatis sancti *Andreae* omni occasione remota & dilatione, &c.

It seems that the parson of *Culinges* by the patron's will herein declared, was to have the tythe of *Westbroke* in kind, and pay half a mark for it yearly to the priory.

Sciant tam praesentes quam futuri quod ego *Henricus de Malemeis* concedo & confirmo monachis ecclesiae sancti *Andreae* apostoli *Rovecestriae*, decimam meam totam de dominico meo, & eam vehendam quocunque voluerint & transfrendam; cum ante hanc concessionem solummodo granum habuerint. Praeterea dono eis & concedo decimam meam de vitulis & porcellis. Has concessionem confirmo illis pro amore Dei & salute animae meae & uxoris, & antecessorum meorum, libere & quiete possidendas assensu haeredis mei & voluntate uxoris & amicorum meorum. Teste, &c.

And *William Hachet* confirms the moiety of the tythes of his demesnes in *Hainwold* (which his ancestors had granted to the priory) to hold free sine omni molestia & exactione. And warrants them contra omnes homines sicut liberam elemosynam nostram.

A like confirmation is from *William of Srambroche* of the tythe of *Srambroche*, granted formerly from his ancestors to the priory.

William of Gurnay had given to the priory certain tythes in *Edintune*, which lying dispersed, were not so commodious for the receipt of the monks as of the parson of the parish; thereupon *Galliena*, grandchild to *William*, declares, that for that cause proviſum est & statutum, ut quaelibet illius ecclesiae personae nomine decimarum illarum liberaliter solvent annuatim praedictis monachis *Rovecestriae* quinque solidos, ad festum beati *Andreae*, and so confirms both the gift of her ancestor, and this composition between the parson of *Edintune* and the prior and convent.

Haimo filius *Guidonis* de *Dudindale*, confirms, in puram & perpetuam elemosynam, the gift made by his ancestors *Gerold* his grandfather, and *Guy* his father, of all the tythes of his land in *Dudindale*; which was afterward confirmed also by his son and heir *John*.

Hamelinus de *Columbeirs* establishes the perpetual right of all the small tythes of his demesnes, in the chanter of the priory, to whom by ancient possession of his predecessors, he found they belonged, when controversy was about them, betwixt the chanter and *Ralf* parson of *Frendesbury*.

William the son of *Thomas* of *Tysfeld* and all his coparceners, confirm the tythes of *Tysfeld* formerly given by their ancestors in puram & perpetuam elemosynam. And further grant all small tythes of *Tysfeld*, as of lamb, calf, piggs, sleece, and the like. Et ut haec nostra donatio (says the deed) & confirmatio inconcussa permaneat, ego *Willielmus omnium fratrum meorum voluntate*

voluntate pro omnibus sigilli mei appositione corrobore. Which I note for the special kind of sealing with the eldest brother's seal only.

Henry of Tuang confirms to them *decimam de Tuange, quam praefati monachi habent de dono Smalemanni avi mei, tam in Tuange, quam in Rundel.*

These grants, or arbitrary consecrations, were all divers years before the end of M.C.C. after *Christ*, and for the most part in the times of *Henry I. king Stephen, Henry II. and Richard I.* Neither need you make doubt of the allowance of them by the clergy of that time. The tythes so arbitrarily given by laymen, were not only possessed by the priory, but were also afterward with others which are not mentioned in the chartulary, solemnly confirmed to them by the archbishops of *Canterbury* with their prior and convent, who supplied that which now is the dean and chapter. For in 23 *Hen. II.* upon a controversy arising about some tythes challenged by the priory, a confirmation was given by *Richard* archbishop of *Canterbury*, in which he grounds their right upon the deeds of the grantors. *Cognito*, are his words, *jure praedictorum monachorum per inspectionem instrumentorum suorum, considerata etiam diuturna illorum possessione, &c.* And then he confirms to them all the tythes granted to them within his diocese, and reckons by name several tythes in eight parishes, most of which occur in those examples; after which he confirms also their appropriated churches with tythes belonging to them. For tythes given with the churches appropriated they had as belonging to those churches; but others severally consecrated were no otherwife in them, than as if rents or other profits had been granted out of lands to them. A like confirmation was made by *Baldwin* in 1 *Rich. I.* of all tythes in particular, that were formerly settled in them by laymens grants. And another such was by *Hubert* archbishop in 1 of king *John*, wherein he confirms to them, *omnes decimas a quibuscunque Dei fidelibus usque in praesens in archiepiscopatu nostro illis collatas.*

Out of the chartulary of the monastery of ^a *Reading, for Leonminster or Lemster in Herefordshire, that was annexed by Henry I. to Reading, in the foundation.*

Walter Clifford, for the health of his father's soul, and for his wife and children, gives *ecclesiae de Leonminster, decimam de tota Hamenesca tam de dominio quam de villanis, s. de omnibus unde decimae dantur tam de vivis quam de mortuis.* But the church of *Lemster* is called there the mother church of the place. This was about king *John's* time. And *Robert Malherbe* gives to the same church *decimam de toto dominio meo de Rifebury, de omnibus unde decimae dantur tam de vivis quam de mortuis.*

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Out of the chartulary of the nunnery of ^b *Clerkenwell.*

Among many possessions confirmed to it by *Henry II.* we find,

Ex dono *Gaufridi* comitis de *Essex* & *Eustaciae* uxoris ejus totam decimam totius vicus & procurationis illorum & domus suae & familiae suae; And, ex concessione *Alexandri* prioris & monachorum ecclesiae sanctae Mariae Magdalenae de *Stanesgate*, assensu conventus ecclesiae sancti *Pancratii* de *Leves*, omnes decimationes illarum de feodo de *Clerkenwell* competentis suis.

And *Maurice* of *Totbam* and *Muriel* his wife grant to the nunnery,

Jus parochiale in perpetuo habendum in terris nostris quas habemus & tenemus de episcopo *Londonensi* juxta *Londoniam*, & in hominibus in eisdem terris existentibus, & in certis terris nostris quae ad parochiam pertinent.

And further, that those lands and his tenants should be joined *jure parochiali* to the church of the nunnery;

Et quod homines illi reddant & faciant quae parochiani debent reddere & facere suae matri ecclesiae.

And that the nuns should quietly enjoy all tythes of those lands, according to the intent of grant from the priory of *Leves* in *Suffex*; which also is remembered elsewhere in the same chartulary.

Maud of *Mandevill*, countess of *Essex* and *Hereford* grants,

Totam decimam totius vicus nostri & familiae nostrae ubicunque fuerimus, de panibus & potibus & carnibus & etiam de piscibus, sicut in carta domini *G. de Mandevill* comitis *Essexiae* antecessoris nostri continetur.

And a great curse is added to all such as should disturb or prevent the nuns in their enjoying of that tythe. The reference made, is to that which is beforementioned in the patent of confirmation, made by *Henry II.* This of *Maud* was about the beginning of *Henry III.* and is but a confirmation of that of *Geoffry* of *Mandevill*, made earl of *Essex* by *Maud* the empress.

Out of the lives ^c *of the abbots of S. Augustines of Canterbury, written by Thomas Sprot, a monk of the abbey under Edward I.*

Eodem anno domini (videlicet M.LXX.) in villa de *Fordewice*, *Wilhelmus* rex contulit sancto *Augustino* & fratribus ejusdem coenobii, ecclesias de *Faverham* & de *Middeltune*, & decimas de omnibus redditibus provenientibus ex illis duobus maneriis s. de *Middeltune* & *Faverham*, & decimam de omnibus appendentibus, terra, sylvis, pratis, & aqua, excepta decima mellis & gabuli denariorum. Et sunt

^a In jam memorata bibliotheca.

^b Ibidem.

^c In biblioth. Cotton.

^d Balzeo Thomas spot dictus est.

istius donationis septem cartae diversorum regum praeter istam. That *gabulus denariorum* is rent paid in money. *Scotland* was then abbot there.

In the same abbot's time, Odo bishop of Bayeux, and earl of Kent, gave to the abbey, decimas aliquas quas mei fideles habebant, id est, *Atbelwoldus* de tribus villis quae dicuntur *Knolton*, *Tisknerberst*, *Ringelton*, & decimam totius terrae *Turslini*, necnon decimam *Osberni filii Lerardi* de duobus locis, id est, *Bedlesangre*. Decimam etiam *Osberni Payfori* de villula quae dicitur *Bochland*. Haec omnia (as the words of his charter are) dono, concedo, & confirmo, &c. Si quis vero huic donationi contrarius fuerit, vel aliquam calumniam ingesserit, aeterno anathemate ipso facto sit reus & regiae majestatis &c. Then the author tells us, that afterward *William d'Aubigny* wrongfully took the tythe of *Knolton* and *Ringelton* from the abbey, as *Roger of Memirer* did the tythe of *Bochland*.

In the year M.LXXIX. *Scotland* being still abbot, *Herbert Fitz-Ivo* gave to the abbey, decimas quinque mansorum suarum, vel centum solidos nummorum, quod in arbitrio abbatis & fratrum S. Augustini constituit utrum decimas ipsas vel centum solidos pro decimis acceptarent. Those five manors, or farms, or manors, were *Oliver*, *Ezzelle*, *Osprenge*, *Hereghsam*, and *Langedone*. But this tythe was afterward, says *Sprot*, wrongfully detained from them by *William Peverell*.

About the same time, abbot *Scotland* made a lease of v. solings (that is, solus, or selions, which are made the same with hides or ploughlands, by some good authority) about *Northbourne*, to one *Wadard* for life, reserving rent of xxx shillings, and the tythes of all profits there accruing, to himself.

The same abbot leased for life to *Amfrid Maucere* his land of *Riple*, and of *Alvetune*, upon like condition, that *Maucere* should pay to the abbey all the tythes both of those lands as also of his five manors, *Horton*, *Legu*, *Ernolton*, *Seeldrisbam*, and *Oslacestone*, and also all other tythes of his yearly increase whatsoever. Decimam etiam tam frugum quam omnium animalium suorum & caeterarum rerum.

One *Hugh Fitz-Fulbert* had a lease for life of the same abbot, of two solings of land in *Sibersteweld*, whereupon rent of xx shillings yearly was reserved, and this condition also annexed, ut daret etiam decimam omnium rerum suarum quas ipse in dominio haberet.

When *Hugh of Trottecliffe*, abbot there, founded his hospital of S. *Laurence*, among other endowments, he gave it, totam decimam totius annonae de dominio de Langeport. This was under king *Stephen*.

And anno Domini M.C.LXXXVIII. *Rogerus abbas* tradidit priorissae de *Scapeia* decimas de *Westland* intra parochiam praedictae priorissae, pro quatuordecim solidis annuatim reddendis sacrisae S. Augustini. What tythes were intra parochiam of the priores of *Shepey*, were by

former grant of the owner conveyed to the abbey.

Out of Peter of Blois his continuance of the history of the abbey of *Crowland* in *Lincolnshire*.

At the foundation of the church, new built by abbot *Joffrid*, in the time of *Henry* the first, a great meeting was of the devouter sort, of *Yorkshire* men especially, and others, to the number of above five thousand in all, and most of them laid stones at it, and upon the stones some offered money, some the patronages of churches granted by charters, others tythes of their lands. As for example, the words are, juxta illos proximum lapidem versus boream posuit *Simon miles* & uxor ejus *Gulana*, offerentes ecclesiae decimam de *Morton*, & de *Schapwik*; & juxta illos proximum lapidem versus boream posuit *Reinerus* de *Bathe miles*, & uxor ejus *Goda*, offerentes operi decimam de *Houtona* & de *Birtona*.

Out of the leiger-book of the abbey of S. *Albans* in *Hertfordshire*.

The abbot and convent, about 20 of *Henry* the third, gave to the church of the holy trinity de *Besko*, and the nuns there, for ever, totam decimam de dominio nostro de *Caysho*, in omnibus rebus de quibus decimae dari solent, and two parts of the tythe-corn of the parish of *Watford*, and some other moieties of tythes, the rest being in the parson of *Watford*. But that of the demesies of *Caysho* was newly now created, and expressed for the provision of apparel for the nuns. But this being so long after the constitution of *Lateran*, and being made only out of their demesies, which perhaps they had discharged, doth only give an example among many, of another original way of creation of tythes in some monasteries, but not so much add to or confirm the arbitrary course of disposition of them, by laymen in times before that so frequently used.

Henricus rex Angliae r. episcopo *Dunelmensi* & omnibus baronibus suis salutem. Sciatis me (it is *Henry the first*) dedisse Deo & S. *Mariae*, & S. *Oswino*, & abbati de S. *Albano*, & monachis de *Tinemuth* omnes decimas suas per *Northumberland* quas *Robertus comes* (that is *Robert of Mowbray earl of Northumberland*, who in time of *William the second* founded the priory of *Tinemuth*) & homines ejus donaverant eis, scilicet decimas de *Colebrige*, & illas de *Ovinton*, & de *Wylun*, illas etiam de *Newburn*, & illam de *Disfington* & de *Calverdon*, & de *Elsweic*, & illas etiam de *Borbalh*, & de *Werkwerth*, & de *Anebell*, similiter & de *Roubyrie* & de *Wulloure*, & volo ac praecipio quatenus supradictus abbas & monachi de *Tinemutha*, bene & integre habeant illas ac libere teneant in mea pace, & quod nullus eis inde aliquid auferat super meam forisfacturam. T. *Nigello de Alben*. apud *Brantonam*.

* Regist. monasterii S. Martini de Bello in archivis regis quae ad forum a regiorum proventus incrementum dictum spectant.

* In saepe dict. biograph.

* Ibidem.

* Videbitur cart. antiq. B. B. 14, & 15. etc. in acc. Lond. & G. 21. in dorso.

By the same king. H. rex Angliæ Ranulpho episcopo Dunelmensi, & Alfrico & Lulio vicecomitibus saluem. Sciat is me concessisse & dedisse Deo, & Sanctæ Mariæ, & S. Oswino, & abbati de S. Albano decimas quas Hubertus de Laval ante dederat monachis de Tinemuda, scilicet de Setona & Calverdona, & de Disfingtona, & volo ac præcipio ut bene & integre in mea pace teneant eas, & quod nullus super eis injuriam faciat. T. Nigello de Alben. apud Wintoniam. This was either a confirmation of a consecration made by de Laval, or else a gift of tythes out of the same lands, by the king, after some elcheat or other new title accrued to the crown. The church or priory of Tinemuth was given to the abbey of S. Albans by William the second, after Robert de Mowbray had forfeited the patronage, among the rest of his estate, by treason.

Henry the second confirms to the monks of Tinemuth all their churches appropriated, and decimas de Corebriga, & Newburna, & de Werewrtha, & de Rodbiria, & de Botala & Wolneta, & de Wylum & Ditentona, & de Calverdona, & de Alswicha, & de Anibella, & decimas de dominio de Herth, & de Setona, & de Tunestall, & de Daltona, & de Mideltona, & de Ovinthuna. All which were, without churches, formerly and in perpetual right consecrated by the owners' devotions. The like often occurs in confirmations made to them by the succeeding kings.

In 7 Rich. I. Hugh of Pudsey bishop of Durham confirms to the monks of Tinemuth, omnes decimas & obventiones tam in blado quam in aliis decimationibus tam de dominiis regis quam baronum, sive aliorum fidelium & propriarum villarum, & dominiorum tam in Northumbria quam in Halicwarchfolk (that is in the territory of the bishoprick of Durham) ita plenarie & libere possidendas, sicut eas plenius & melius habuerunt vel habere debuerunt, tempore nostro vel antecessorum nostrorum, & sicut donatorum cartæ testantur. And some other churches of such general ratification they have from the archbishop of York.

In the instrument of foundation of the cell of Belveir, made between abbot Paul and Robert of Belvedeir or Belveir, or de pulchro visu, that Robert grants it the tythes of all lands that he should hereafter purchase. Omnium terrarum quasunque per Dei adiutorium & concessum regis in suum dominium acquirere, quoquo modo posset, dedit & concessit decimas eidem ecclesiæ sanctæ Mariæ; that is to the cell, which was at first purposed for a parish-church, but by advice of archbishop Lanfrank was converted into a cell. Dedit etiam & concessit decimas vinearum suarum omnium & sedem molendini in proxima aqua, & concessit decimas decem villarum ad præsens, ex suo videlicet dominio annuæ, omniumque rerum de quibus decima danda est & datur, semota quidem tertia parte presbyteri villæ. The names of the manors or towns of which he thus gave two parts of

the tythes, are, Horton, Fraton, Saperton, Rishendon, Stoches, Wihberteston, Segeton, Medburne, Wivwell, and Wilsaneftorp.

Robert of Piriton gave to the abbey, the church of Saint Mary that he had built in Piriton; and endowed it with gift of all the tythe ejusdem villæ sui domini & omnium suorum hominum ibi manentium omnium illarum rerum de quibus recte decima datur; And in Nicenton he gave all the tythe of his demesnes only. In Cavendeis & Hocatou & Apserton, decimam domini sui, excepta cantaria.

Ralf of Limefi gave to the church of Saint Mary also that he built in Piriton, decimam suam in eadem villa &c. & decimas hominum ejusdem villæ ipsi libenter concedentibus. Apud Nicentonam dedit duas partes decimæ suæ &c. Apud Hulfeslea dedit similiter duas partes decimæ suæ, & apud Epreftunam similiter, & apud Cavendeis & Hockentunam. And these endowments are there called *beneficium ecclesiæ*. These and other tythes so severally granted are confirmed to the abbey by Alan de Limsey, Gerard de Limsey, and others of the posterity of Ralf. The tythe of the agistment of Bihesworth wood, also was granted by Ralf, and of other agistments, with provision also, that if the woods were assarted or improved by culture, the abbey should have tythe in kind of the improvements. The whole deeds of conveyance are there at large; and a bull of confirmation was long afterward obtained from pope Alexander, as I think, the fourth.

W. Peverell gives to the monks of Hatfield, decimam denariorum meorum de Meldona, & rectam decimam de Dona de omnibus rebus de quibus recte datur decima. And then adds churches of other places cum decimis. That was in Henry the first his time.

Out of Matthew Paris's *his lives of the abbots of S. Albans*.

In the time of abbot Paul, under Henry I. Data est, saith he, huic ecclesiæ decima de Cundella, & decima de Rigentona, & decima de Roniges, & de Breihelham, & de Herlaga, & de Thamlesford, & de Cliftona, & decima quatuor villarum istarum s. Huntelesge, Gertheliam, & de Brunfield, & Redlang. Et duæ partes decimæ villarum istarum s. Sedintonæ & Boctona. Et tota decima de Trumpinton, & duæ partes decimæ de Wacerleia. Porro in Hertfordiis duæ partes decimæ de Efenden & Beiford, & de Hertfordingbirie. And other like.

Out of the chartulary^k of the priory of Boxgrave in Suffex.

About the year M.C.LXXX. a confirmation is made by William S. John, of what had been formerly granted to the priory by his ancestors; and among other possessions, occurs decima de Chiconore, and decima omnium nemorum suorum

^k In biblioth. Cotton.

^k In eadem biblioth.

de honore Halmaci in paffione & venditione, & aliis exitibus. And this William for the maintenance of a fourteenth monk (there being but thirteen by the first foundation) which he added, gave, *decimam gabulorum fuorum de Elstretintona*, and other places, & ex dono Petri de Hampton *decima molendini sui*, is related to be theirs.

The same William in another charter grants, In fubfcriptis ecclefiis, fcilicet *Walborton, Bernaham, Hantoneta, Honestum, Mundeham*, duas portiones de terris & decimis omnibus quae ad ipsas pertinent (*for the third parts were assigned by him, and the bishop, and the prior to vicarages*) & in omnibus praefcriptis ecclefiis advocatouem liberam & praefentationem presbyterorum qui in sua persona in illis ecclefiis Deo assidue deferviant &c. Et reddidi *decimam gabulorum de Stretinton*, videlicet viii solidos per annum: & the tythe of other rents.

Robert S. John, brother of this William, gives *decimam omnium gabulorum de Walborton*, & *decimam omnium gabulorum totius villae de Bernham*, quam frater meus *Willielmus de S. Johanne* dedit nihil, ad teneendum in servitio Dei quatuordecimum monachum in conventu *Boxgrave*, quia prius solum tredecim fuerant. Quod si quartus decimus ibi defuerit, *Tustinus* nepos *Dunelinae*, vel haeres suus colliget & tenebit eas usque ad annum integrum; si vero ultra; dabuntur pauperibus & viduis, & orphanis duarum villarum. Teste *Willielmo de S. Johanne, Waltero & Willielmo capellanis, Rogero Hlai, & Thoma filio suo, Rogero de Kaisci*.

And a confirmation is there also by *William S. John* of the gift, that is of the profits received by the lord in money or rent, which lay indeed properly in the lessor's grant. And therefore also *William* the lessor had, by another charter, granted those *decimas gabuli* to *Robert*, to the same purpose, which he expresse in his deed of consecration to the priory; The lessor's grant to him, the confirmation and his consecration were enough to settle this tythe-rent in the monastery: but clearly this could not have discharged any former right of tythes in kind payable out of the land.

The churches of *Warberton* and *Bernham*, and the rest before named with others, were, with the belonging tythes, appropriated to the priory, but the tythes alone of *Thadeham* and *Kienor*, which they call *Chienor*, were by grant from the ancestors of the *S. Johns*, settled in the priory, and never named with any church, as appears in sundry confirmations of them. So also is *decima* de *Liperinges*, in the ratification of such grants to them made about that time by *John* and *Seffrid* bishops of *Chichester*, and *Richard* bishop of *Canterbury*. Of that tythe of *Liperinges* see more within a few lines.

Sciant praesentes & futuri quod ego *Richardus de Tresgoz* filius *Philippi Tresgoz* dedi & concessi, & hac praesenti carta mea confirmavi Deo & ecclesiae B. Mariae de *Boxgrave*, & monachis ibidem Deo fervientibus pro salute animae

meae & uxoris meae & antecessorum meorum, & ut missa pro anima mea, & uxoris meae, & pro animabus patris & matris meae, & antecessorum meorum, in praedicta ecclesia de *Boxgrave*, ter in unaquaque septimana celebretur, omnes donationes quas habent de donationibus *Philippi* patris mei & antecessorum meorum, tam in terris quam in decimis magnis & minutis, in manerio meo de *Hamptunete*. Et insuper dedi & concessi & hoc scripto autentico confirmavi praedictis monachis de *Boxgrave*, omnes minutas decimas de praedicto manerio meo de *Hantunete*, scilicet in agnis, in vitulis, in pullis, in porcis, in aucis, in lanis, in casis, in pomis, in fructibus, & in omnibus aliis rebus undecumque decimae sanctae ecclesiae spectant aut provenire debent, tam majores videlicet quam minores. Et ut haec mea donatio & concessio perpetuae firmitatis robur obtineat, eam praesentis scripti testimonio & sigilli mei munimine roboravi. His testibus *Roberto* persona de *Storbetune*, *Stephano* capellano, *Philippo Bernhuse*, *Willielmo Picoth*, *Willielmo Purcace*, *Philippo de Perham*, & multis aliis. This was in the same time, under Henry the second.

Geffrey of Colevill gives to the priory *decimam de Kienore*, de toto dominio meo in terris cultis & incultis, in pomeriis, in piscariis, & molendinis, in perpetuum & liberam elemosynam, salva tertia portione totius decimae praefatae de dominio meo, quae ad ecclesiam de *Hidlefham* pertinet, cum tota decima de vilanagio meo. Et ut hoc firmiter teneatur, sigillo meo confirmavi hoc scriptum. His testibus *Hunfrido de Sartill*, &c.

Robert of Colevill grants them duas portiones decimae garbarum de toto dominio meo de *Kienore*, in perpetuum & liberam elemosynam, ex donatione antecessorum meorum iis prius collatam.

Sciant praesentes & futuri quod ego *Radulphus de S. Georgio* & *Agatha* uxor ejus & *Alanus* haeres eorum dederunt & concesserunt Deo & S. Mariae & monachis de *Boxgrave*, *decimam de Liparinges* in perpetuum elemosynam, quam prius dederat is *Basilias* mater ipsius *Radulphi*. Et ipsi monachi debent facere habere ecclesiasticum servitium in ecclesia sua de *Ichenora* vel in capella sua de *Briddeham* hominibus praedicti *Radulphi* morantibus apud *Liparinges*, & in singulis hebdomadis unum servitium pro anima *Basiliae*, & pro cunctis fidelibus defunctis, donec praedictus *Radulphus* vel haeredes sui ibi fecerint quoddam oratorium, in quo unus de capellanis monachorum faciet praedictum servitium in hebdomada. Testibus *Ranulpho* capellano, *Ricardo* capellano de *Boxgrave*, *Roberto Legato*, & aliis multis. This was about king John's time.

Out of the ¹ chartulary of S. Neots or Needs in Huntingdonshire.

Omnibus sanctae matris ecclesiae filiis *Seberus de Quincy*, salutem. Sciat is me concessisse & confirmasse monachis S. Neoti decimationes

¹ In billoth. Cotton.

quas antiquitus habuerunt de terra mea in *Grantefete*, s. totam decimationem dominiorum quae fuerunt *Robertus Faston* in eadem villa, tam terrarum quam virgultorum. His testibus &c.

A like instrument of confirmation from him, is of two parts of the tythes of *Subo*, and of a third part of the tythes of *Einsbury*, which had been likewise formerly settled by arbitrary consecration, in the monastery. This was about the fourth year of king *John*, and was confirmed by the bishop of *Ely*.

Sciunt praefatos & futuri, quod ego *Albinus Faston* concedo & per hanc cartam confirmo Deo & ecclesiae S. *Neoti* fratribusque meis, ejusdem ecclesiae monachis, decimam illam quam *Robertus Faston* avus meus & *Enslachius* pater meus eis dederunt & concesserunt, s. de terris & pecuniis totius domini mei in *Grantefete*, & in *Subo* & in *Weston* duas partes decimae: & juxta ecclesiam de *Grantefete* unam mansuram, quam pater meus cum eadem decima eis concessit &c. Hoc donum factum est anno quo rex Angliae *Henricus* secundus duxit exercitum apud *Tolofam*.

Sciunt praefatos & futuri, quod ego *Galfridus* filius *Suani* & *Hathewis* uxor mea & *Adam* filius noster concessimus Deo & ecclesiae sancti *Neoti* & monachis *Becci* (this priory was a cell of the abbey of *Bee* in Normandy) ibidem Deo servientibus, pro salute nostra, duas partes decimae bladi, & omnium rerum quae decimari debent, illius hydae terrae in *Croxton*, quam tenuit *Adekwoldus Flammangus* avus praedictae *Hathewis*, quas ipse dedit ecclesiae S. *Neoti* in perpetuum & liberam elemosynam. T. &c.

Ego *Robertus Wasse* concessi Deo & S. *Mariac Becci* & S. *Neoto* confessori & ecclesiae ejus de *Ernekeberia*, & monachis qui inibi deserviunt, duas partes totius decimae meae de *Wereslasi*, in omni videlicet substantia mea, in segetibus & animalibus unde decima dari debet, & hoc fieri praecipue pro anima *Soeni de Effessa*, & pro salute domini mei *Roberti* filii praedicti *Soeni* qui mihi hanc terram dedit, & pro salute *Gonnor* uxoris suae, & pro salute mea & uxoris meae, & *Willielmi* filii *Gerei* patris sui, & pro anima patris mei, & matris meae, & fratris mei, & omnium amicorum & antecessorum meorum, &c.

This was afterward confirmed by the heirs of *Robert Wasse*. But in the confirmations it appears, that *Torold Wasse* had also granted it before *Robert*. *Torold*, I think, was *Robert's* father, and had granted it about *Henry* the second his time.

In the titles of the deeds there, is *carta Roberti de Ferrers de decimis de Benewell*; but the charter itself is wanting.

Out of the chartulary of the^m hospital of S. Leonard's in Yorkshire.

Stephannus rex Angliae archiepiscopo *Eborum*, justiciariis, vicecomiti, baronibus, mini-

* In eadem biblioth.

stris, & omnibus fidelibus suis *Eborachire*, salutem. Sciatis quia concessi & dedi in perpetuum elemosynam pro anima regis *Henrici* avunculi mei, & pro salute animae meae, & *Matildis* reginae uxoris meae, & *Enslachii* filii mei, & aliorum puerorum meorum, Deo & hospitali sancti *Petri Eborum* omnem decimationem de theloneo villae de *Thicabilla*, & omnem decimationem molendinorum ejusdem villae, & praeter haec v. bovatas terrae in *Wluehuat*, & unam bovatom in campo de *Bagalaia*. Quare volo & firmiter praecipio quod bene & in pace & libere & quiete & honorifice hanc elemosynam teneant, quicunque honorem de *Thicabilla* habeat, sicut elemosynam Deo & pauperibus Christi in perpetuum datam. Teste *Henrico de Essex*, & *Adam de Belin*, & *Willielmo de Clarfai* apud S. *Edmundum*. But in the bulls of confirmation from divers popes made to the hospital, no mention is of these tythes.

Out of a ms. of constitutions, ⁿ charters, and writs, touching the province and church of York.

Aet Dei gratia *Carleolensis* episcopus. Omnibus sanctae matris ecclesiae fidelibus in Christo salutem, & orationem. Notum sit omnibus & videntibus & audientibus has literas, me dedisse & concessisse decanatu *Eborum*, & *Willielmo* decano, & omnibus ejus in decanatu successoribus, decimas molendinorum de *Pokelinton*, & de dominio meo & de tota socla. Sic enim provisorium fuit & constitutum a rege *Henrico*. Constitutum autem & confirmatum est de omni possessione debere decimas dari tam in molendinis quam in rebus aliis, ideoque autoritate apostolica & nostra per excommunicationis sententiam prohibemus, ne aliquis has decimas molendinorum auferre & diminuire praesumat, regia tantum dignitate excepta, in quam nullam dare praesumimus sententiam. Valeat.

This *Aet* is *Aethelulph*, the first bishop of *Carlisle*, confessor to *Henry* the first, who first made it a bishoprick in M.cxxxi.

Out of old charters remaining in the hands of that noble knight Sir Robert Cotton.

R. Dei gratia *Ciceffrensis* episcopus G. decano caeterisque fidelibus sanctae ecclesiae salutem & benedictionem. Sciatis me concessisse *Brunkino de Hasling* dare decimam suam totam de dominio suo de terra quam ipse tenet in marisco de *Penensel* Deo & ecclesiae sancti *Martini de Bello* (to the abbey of *Battell*) pro anima sua & omnium parentum suorum salute. Concedo etiam hanc decimam & omnes alias decimas quas ipsi monachi de *Bello* habent in parochia mea quatenus eas libere & quiete teneant & possideant imperpetuum abique omni molestia; videlicet nominatim decimam *Vulvini de Henam*, decimam *Sewini de Glutintune*, decimam *Lewini de Baderberste*, decimam quam parochiani ecclesiae sanctae *Mariae de Bello* dant de

* In biblioth. auctori.

Nedresfelde,

Nedrefelde, decimam quam *Ailricus* de *Ora* dat, decimam de *Helinsfelde* quam ipsi parochiani sanctae *Mariae* de *Bello* dant, decimam de *Bocbolte*, & decimam de *Bromham*, quam *Ailwi* & *Ethelida* dederunt cum filio suo *Benedicto*, quando effectus est monachus, absque omni calumnia in perpetuum tenendam. Similiter etiam & omnes ecclesias & decimas quae eidem ecclesiae datae sunt, vel quas eadem ecclesia & monachi tenent in parochia mea, ut eas libere & quiete teneant episcopali auctoritate confirmo. Unde vobis & omnibus successoribus vestris, & omnibus Christi fidelibus ne eis inde aliquam molestiam, vi, aut venditione, vel qualibet occasione faciatis, super anathematis vinculo defendo. *T. Henrico* archidiacono, *Rad.* capellano, *Calone* cantore.

Neither the whole name of the bishop, nor the date, are found in the instrument. But it appears by the hand, and that *R.* designing the name, to be of the time of *Henry I.* and made by *Ralf* then bishop of *Chichester*.

In a deed of *William* earl of *Warren* and *Surrey*, made in the time of king *Stephen* to the priory of *Leves* in *Stafford*, after some immunities given them in all lands which they held of his fee, this grant follows.

Dono etiam illis de omnibus dominiis meis plenariam decimam, videlicet, de blado, de focno, de agnis, de vellcribus, de calcis, & plenariam decimam denariorum de omnibus redditibus meis de *Anglia*. Quamvis autem ex illis denariis in procuracione mea five aliorum quorumlibet expendatur, ex illis tamen plenaria supradictis monachis reddatur decima. Et si dominiū meum aut redditus mei creverint, eotenus crescat & decima monachorum. Hacc supradicta ego pro salute animae meae, & pro animabus antecessorum meorum, praedictis monachis concessi & hac mea praesenti carta confirmavi, quando feci dedicari ecclesiam sancti *Pancratii* (that is, the priory of *Leves*) & de decima denariorum de omnibus redditibus meis de *Anglia* dotavi ipsam ecclesiam, & inde feisivi eam per capillos capitis mei & fratris mei *Radulphi* de *Wareuna*, quos abscedit cum cultello de capitibus nostris ante altare *Henricus* episcopus *Wintoniensis*. Teste *Teobaldo* archiepiscopo *Canuariensi*, *Henrico* episcopo *Wintoniensis*, *Rodberto* episcopo *Bath.* *Astelino* episcopo *Rovecestr.* qui eandem ecclesiam dedicaverunt, & teste *Edwardo* abbate *Rading*, *Waltero* abbate de *Bello*, *Waltero* priore *Canuariensi*, *W. . . .* archidiacono *Can.* *Richardo* decano *Cicestr.* *Rodberto* archidiacono, *Johanne* de *Paghham*, *Willielmo* comite *Cicestr.* *Rad.* de *Wareuna*, *Reg.* de *War.* *Ingone* de *Petrep.* *Radulpho* de *Teiz*, *Rodberto* de *Wefnevall*, *Rodberto* de *Fricvill*, *Rodberto* de *Petrep.* *Willielmo* de *Petrep.* *Adam* de *Puninger*, *Gudone* de *Merrecut*, *Willielmo* filio suo, *Willielmo* de *Droffio*.

The intent of this was to settle the tythes of all his revenues whersoever through *England*, in the priory, in kind, of his demelns; in money, of his rems. Neither did he grant only the tythe

of what he then was seised of, but of all future purchase also and improvements. That livery of seisin, as it were, made upon the altar by the hair of the head both of the grantor and of his brother, is not without other example of those ancient times, wherein both tythes ^a and other possessions, were solemnly consecrated, either by hair, or a horn, or a cup, or a knife, or a candlestick, or whatever that might be really delivered on the altar. For, the form of conveyance in perpetual right, both to the church and laity, was to give into ^b the hands of the grantee or feoffee some such thing, as at this day a twig or a turf is in seoffments, or as in institutions (according to the formulary of the court of *Rome*) a ring is to be given; and the altar was usually made the place of such a livery. But in the examples of cutting the hair, especially in this where *Henry* bishop of *Winchester* doth it, perhaps more was understood than only a livery upon the grant. Had it not also some reference to the ancient ceremony of cutting the hair at a confirmation? Which was usually done by the godfathers, as may be collected out of that of *Adrevald*, where^c he speaking of *Charles Martel*, says, that *pepigit hic foedus cum Laiprando*, eique filium suum *Pipinum* misit, ut more Christianorum fidelium ejus capillum primus attonderet, ac pater illi spiritualis existeret. I dare affirm nothing with confidence herein. But it is specially observable, that this charter of the earl of *Surrey* was not, it seems, made without great advices as well as testimony, both of clergy and laymen; whereto you may add the judgment of *Theobald* archbishop of *Canterbury*, in his reprehension of *Ala*, countess dowager of *Warren* and *Surrey*, for not payment of the tythes of her dowry according to the grants of the ancestors of her husband. The original of the admonition to her, speaks thus:

^d T. Dei gratia Cantuariensis archiepiscopus Anglorum primas & apostolicae sedis legatus. Dilectae filiae suae *Alae*, comitissae *Warrennae* salutem. Pervenit ad aures nostras religiosorum fratrum *Lewensis* ecclesiae monachorum stipenda querimonia, quam cum ipsi ex antiqua donatione comitum *Warrennae*, videlicet avi & patris *Willielmi* viri tui, & sui ipsius tui, antequam dotem tuam consecuta fuisses, de omnibus dominiis comitis decimationem denariorum semper inconvulsa, tanquam ecclesiae tuae dotem possederint, tu, post perceptam doti tuae investituram, ejusdem fratribus ipsam decimationem, quae ad dotem tuam spectabat, subtraxeris. Quod si ita est, vehementer admiramur, cum eorum quae Deo & ecclesiae suae in elemosynam collata esse noscuntur, nihil doti tuae vendicare debeas nec possis. Crudele nimirum est & sacrilegium proximum quod super divinum altare senel devote oblatum est iterum repetere, & ad secularia transferre. Proinde tibi salubriter consulimus, & in domino admonemus, quatenus sicut vis visum tibi a Deo libere conservari, ita jus suum cum integritate monachis relinquas; & nullatenus datam eis denariorum decimationem dotis

^a Videlicet app. ad concil. Lateran. part. 47. cap. 6. cap. 14.

^b In thesaur. Cottoniano.

^c Inq. ph. lib. fol. 112. b.

^d De mirac. S. Benedic. lib. 1.

tuæ retinæ; alioquin eis in iustitia deesse non poterimus, cuius debitores omnibus existimus. Although he speaks only of the *decimatio denariorum*, yet in regard that he mentions it with *de omnibus dominis comitis*, it cannot be well understood otherwise than of all the tythes of the earl's possessions, according to the former grant.

Richard de Muchegros, about king *John's* time, confirms to the abbey of *Perfore* two parts of the tythes which were wont to be paid to it out of his land of *Wlhavesthulle, tam bladi quam lini & foeni* (exceptis *linis curtilagii mei de dominico meo de Wlhavesthulle*) as also the third part of the tythes of his tenants there, and further grants them *duas partes decimarum bladi de omnibus assartis meis ibidem de novo factis, & de omnibus assartis per me vel per haereditas meos in posterum faciendis, &c.* this is sealed. The seal is circumscribed with *† S. Richardi de Wlhavesthulle*.

W. prior of Lewes in *Sussex* gives in 44 *Hen. III.* for ever to the priory of *Southwark*, *decimas quas habuimus de dominico Henrici de Hologhe apud Reygate*, reserving yearly two shillings and sixpence to be paid for them to the sacristan of the priory of *Lewes*. How could this tythe have been in the priory of *Lewes* to have granted, without a precedent consecration from *Hologhe*, or some other, from whom he had derived his estate?

Willielmus Dei gratia Wintoniensis episcopus, *Stephano archidiacono*, & omni clero *Surreiae* & baronibus, salutem & benedictionem. Notum sit vobis quod *Swardus de Ealdestede* venit, me praesente ad *Sudwerciam*, ibique super altare divina praeventus gratia obtulit decimam de *Hladebrake* Deo & ejusdem genitrici & virgini *Mariae*, & canonicis ibidem Deo servantibus perpetualiter, & hoc meo consensu. Quare jubeo ex parte Dei & mea ne quis eam retineat, vel ab eodem loco auferat, vel possidentes illam perturbet. Si quis vero citra hoc praeceptum quicquam inde facere praesumpserit, perpetuo anathemate feriat. Cujus rei testes isti sunt *Henricus de Twin*, *Stephanus archidiaconus*, *Livingsius de Coleres* canonicus, *Rogerus canonicus*, *Helias dapifer*, *Joannes capellanus*, *Richerus*, *Vitalis de Wicford*, *Gozo clericus de Micheam*, *Oswardus monachus*, *Walchelinus*. This was in the time of *Henry I.* *William Giffard* being then bishop of *Winchester*. The seal remains to it.

Willielmo Dei gratia Norwicensi episcopo, archidiaconique suis de *Sudfolc*, omnibusque sanctae matris ecclesiae filiis, *Galfridus filius Roberti* & uxor sua *Anneis* in domino salutem. Sciatis nos concessisse ecclesiae apostolorum *Petri & Pauli de Gipefwico*, & canonicis regularibus ibidem Deo servantibus, in perpetua elemosyna, decimam molendini de *Hagenford*, scilicet VIII. solidos annuatim, duos ad nativitatem Domini, duos ad pascha, duos ad festivitatem *S. Johannis*, duos ad festivitatem sancti *Michaelis*, & dimidiam marcam argenti de *Fachendune*, & decimam foeni, & omnia quae habent infra villam de *Broches*, & extra, ad eam pertinentia, tam in terris quam in decimis & redditibus, & in

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omnibus libertatibus datus praedictis ecclesiae a praedecessoribus & parentibus nostris, &c.

Under king *Stephen* it was made; and hath a seal annexed.

Out of an original charter of king *Stephen's*, made to the priory of *Eye* in *Sussex*. It was in the hands of that learned and honorable the lord *William Howard*. I had the use of it through the courtesy of that noble knight *Sir Robert Cotton*.

Quoniam, divina misericordia providente, cognovimus esse dispositum, & longe lateque praedicante ecclesia, lonat omnium auribus divulgatum, quod elemosynarum largitione possunt absolvi vincula peccatorum, & adquiri coelestium praemia gaudiorum: Ego *† Stephanus Dei gratia Anglorum rex*, partem habere volens cum illis qui foelici commercio coelestia pro terrenis commutant, Dei amore compunctus; & pro salute animae meae *† & patris mei*, matrilque meae, & omnium parentum meorum *†* & antecessorum meorum regum *† Willielmi* scilicet regis avi mei *†*, & *Willielmi* regis avunculi mei *† & Henrici* regis avunculi mei, *† & Roberti Malet*, & consilio baronum meorum, concedo Deo & ecclesiae *Sancti Petri de Eia* & monachis ibidem in Dei servitio congregatis, ut habeant omnes res suas quietas & liberas ab omni exactione, & teneant eas in terris, in decimis, in ecclesiis, in omnibus possessionibus sicut unquam melius & honorabilius tenuerunt tempore *Roberti Malet*, & tempore meo antequam rex essem; cum *foca & facia, & tol & tiem & insanganathief*. *†* Praecipio etiam ut teneant de quocunque tenebant (& non mirtantur in placitum) sicut tenebant die quam *Henricus rex* fuit vivus & mortuus, & die qua ad regni coronam perveni. Sit etiam ipsa ecclesia in meo dominio cum rebus subscriptis. Concedo ecclesiam de *Holeste*, de *Dinevet*, de *Bordenis*, de *Sutton*, de *Stadebroc*, de *Wingefel*; et mercatum & theloneum de *Oreford*; praeter navium quae pertinent ad firmam de *Donerou* * p. p. *† xxx.* sol. ecclesiam ipsam ubi monachi habitant cum terris suis; decimam de *Eia*, duodecim solidos de foro, unam feriam per quatuor dies ad festum *sancti Petri* kalendas Augusti, nullusque in feria habeat potestatem nisi monachi & homines eorum, & omnes illuc venientes & inde redeuntes habeant meam firmam pacem, nullusque eos in aliquo disturbet super x. libras forisfacturae. *†* Habeat etiam ecclesia eandem libertatem de episcopo, de archidiacono, de decano, quam habuit a tempore regis *Eadwardi*, & a tempore *Eadrici de Leseefeld* & regis *H.* *†* Sitque de priorie ponendo & removendo sicut constitutum fuit in tempore *Roberti Malet*. *†* Habeat etiam omnes decimas de maneriis sicut habuit in tempore *Roberti Malet*, scilicet de *Eia*, *Stadebroc*, *Radingefeldia*, *Dinevet*, *Tattinget*, *Bedingham*, *Keleton*, *Olesteia*, *Leeß*, *Donewic*, *Lessefeld*, *Bergebi*, *Welleburn*, *Segebroc*, *Colum*, *Cave*. *†* Concedo etiam ecclesias has, de *Bewesfia*, *Segebroc*, *Bergebi*, & ecclesias de *Donewico*, quae factae sunt & faciendae. De

7 Y

Bedingham,

* Forte, proprius.

Bedingeham, Lessfeld & presbyterum ejusdem villae, & de omnibus meis filvis decimam pascuagii, piscariam etiam de Wells. Atque totam Bedefeldiam, Storas, Pelecor, Frasingsfeld. Hoc etiam terrae quod habebant tempore *Roberti Malet*, in *Bedingeham*, & omnia inenouisse teneant. Concedo etiam ecclesiam *sancti Potulsi de Ica* cum appendiciis suis, quam dedit *Willielmus de Rovill, & Beatrix* uxor ejus, & terram *Godem*. de *Iakl*. & ea quae habebant in *Doneuico* eodem *Roberto* vivente. ✠ Horum igitur supradictorum *socam & facam* in omnibus concedo, & nominatim in *Doneuico* & decimas meorum hominum; *Walteri* scilicet *Arbalessarii*, & ecclesiam *sancti MARGARETAE* de *Halgeslowe*, & terram quae ei pertinet. Decimam quoque *Rogeri* filii *Walteri* de *Huntingfeld*, & de *Benges*, *Ricardi Houeill* de *Wiverdest*, de *Geslingelb*, *Richingebal*, *Reindum*; decimam *Hugonis* de *Alvilario* in *Brom*, & in *Selshangers*, & hoc quod *Alwinus* presbyter tenet de eo in *Beria*. Decimam *Willielmi* de *Rovilla* in *Clakesforp*, & in *Gleneham*, & de xxx. acris quas tenet *Willielmus Bole* de feudo comitis *Britanniae*; decimam *Willielmi Gulafri* *uncheunel*; decimam *Petri* de *Bedingsfeld*; decimam de *Pletford*, & ecclesiam villae & *Aluricum* *Delsen* cum sua terra; decimam *Hernaldi* filii *Rogeri* in *Wittingeham* & *Ascheton*; terram *Osberti* de *Cratevill* in *Acolt*, & hoc quod *Benedictus* capellanus tenebat de *Roberto Nalato* in decimis, & rebus aliis; decimam *Will.* de *Pesenhale*; decimam *Jordani de Wilebebe*; V. sol. de *Pentenhabes*, quod *Will.* de *Rovilla* dedit; III. solidatas quas tenet *Johannes* filius *Roberti*; terram *Alwini* filii *Wulfstan* in *Bedesfeld*; VII. solidatas quas tenet *Wahner* presbyter de *Codenham*; decimam *Hunfridi* filii *Uweei*; decimam *Radulfi Grosi* de *Gretinges*; XII. solid. de aquitania in *Aldejen*; terram *Wulmari* in *Aksleia*; et, praeter haec supradicta, concedo eis quod decima eorum de *Doneuico* crescat quoque anno in denar. & harenq. & in omnibus aliis rebus secundum hoc quod redditus mei ibidem crescant. Teste *Nig. Eliensi* episcopo, & *Roger*. cancellar. *Henrico* nepote regis *Stephani*; *Galer*. com. de *Mell*. *Roberto* filio *Rich. Will.* *Mart. Adam* de *Belu*. *Johan*. *marefc*. *Hubert*. *Demunc*. *Johan*. filio *Rob.* *vicecom*. *Gaufrid* fil. *Walt. Will.* fil. *Reg. Herv.* de *Glavill*. *Rich.* de *Alenc*. *Roger* de *Hofa*. Anno ab incarnatione domini M.CXXXVII. apud EIA secundo anno regni mei, in tempore *Ebrardi* episcopi *Norwicensis*, & *Gausleni* prioris *Eie*. Ipse rex subscripsit. *Eustachius* filius ejus subscripsit. *Maltilda* regina subscripsit. *Willielmus Cantuariensis* archiepiscopus subscripsit. *Turstanus Eboracensis* archiepiscopus subscripsit. *Alexander Lincoln.* episcopus subscripsit. *Henricus Winton.* episcopus subscripsit. *Joannes Rossensis* episcopus subscripsit. *Eurardus Norwicensis* episcopus *Simo Wigornensis* episcopus subscripserunt. *Robert.* *Herefordens.* episcopus, & *Robert.* *Badonens.* episcopus, & *Gislebertus Londons.* episcopus lub-

scripserunt. Quicunque aliquid de his quae in hac carta continentur auferre aut minuire, aut disturbare scienter voluerint, autoritate domini omnipotentis patris & filii & spiritus sancti, & sanctorum apostolorum, & omnium sanctorum sit excommunicatus, anathematizatus, & a consortio domini & liminibus sanctae ecclesiae sequestratus, donec resipiscat, & regiae potestati xxx. libras auri perfolvat: Fiat. Fiat. Fiat. Amen. Amen. Amen.

It is the fairest hand and largest charter that ever I saw of that age, and the seal is yet hanging to it. And in a roll ¹ of the benefactors of that monastery, very many are mentioned for their donors of thythes, or two parts, or third parts, of divers mannors.

Out of the cartae antiquae among the records of the tower of London.

When king *Henry II.* and pope *Alexander III.* dissolved ² the number of the nuns of *Ambresbury* in *Wiltshire*, by reason of their unchastity, and filled the nunnery with others out of those of *Font-Everard* in *Normandy*, divers churches and parishes were annexed, by grant and confirmation, to the new company, and also tythes severally, as decima de *Fortebiria*, & de *Wadhulla*, &c. & mauerium de *Etona* cum decima de dominio & medietate decimae rusticorum, & mauerium de *Chelmsfonsa*, cum decima ejusdem manerii, &c. & decimam de *Ingafelot* & de *Godingeslot*, cum omni jure parochiali & decima de *Hamfleda*, cum omni jure parochiali. And divers others such.

Henry II. grants and confirms to the monks of *Thetford* in *Norfolk*, ³ decimam de *Bradleia*, decimam de *Oliftona*, decimam de *Florendon*, decimam de *Moledona*, and many other such, without mention of churches or chapels with them; yet in the same charter, divers churches of other places are by themselves conveyed or confirmed.

William the first gives to the church of ⁴ *Westminster*, decimam de *Wic* de eadem parte quae ad me pertinebat, atque iterum reddidi eandem partem eis injuste ablata quam *r. Edwardus* antea dederat. Then severally follow divers appropriations of churches. This was in the second of his reign.

Henry II. gives to the church of *Sarum*, ⁵ divers churches with tythes, and among them,

Ecclesiam de *Durneforda* cum terris & decimis quas *Walterus filius Richardi* & *Isabella* de *Toeni* & reliqui advocati ejusdem ecclesiae ei dederunt: & omnes decimas & de nova foresta, & de *Panetot*, & de *Bucholt*, & de *Ande- vera*, & de *Husburna*, & omnibus forestis meis de *Wiltshire* & de *Dorseta*, & de *Berkshire*; & de omnibus rebus scilicet de firma, de pascuagio, de herbagio, de vaccis, de caseis, de porcis, de equibus; & omnes decimas de omni venatione praedictarum forestarum, excepta decima illius venationis quae capta fuerit cum stabili in fo-

¹ In biblioth. Cotton.
² C. C. 2.

³ Vide G. G. 7. & F. 1. & B. 8. & part. 1. cart. 1. *Johann.* membr. 20. chart. 127.

⁴ G. G. 1. & 2.

resta de Windlethorpe &c. What the bishop had yearly, by reason of this grant, may be seen in *rot. claus. 5 Hen. III. membran. 14.* And for grants from the kings of the tythe of venison, other examples are obvious; as of the forests of *Essex* to the bishop of *London*, by king *John*, and of others antiently, of the * tythe of the venison taken in the forests in *Northamptonshire*, to the abbot of *Bury*; to omit that of *Henry* the first, his grant of the tythe of all his venison taken in *Yorkshire*, to the abbot of *Tork*, which occurs in the 2^d cyre of the forest of *Pickering*.

In a charter of *Henry* the first, many tythes are granted and confirmed to the priory of *Mountague* ^b in *Somersetshire*, as *duae partes decimarum de Atford, decima de Crimoc, & medietas decimarum de Cifelberg, de Clafford, de Northon juxta Taunton, & decimae domini de Merston, & de Hetecumb, de Candel, de Torp, de Cernel, item de Cernel, & de tertio Cernel, &c.*

Henry the first granted ^c to the canons of *Cambridge*, *decimas de dominio meo de Canteburgia, & ecclesiam S. Egidii &c.*

About 3 *Hen. I.* *Manasses Arscie* ^d renewed his charter to the abbey of *Fischamp* in *Normandy*, and gave them *apud Sobrinton de suo dominio duas garbas decimae suae*, and so in divers other manners. *Dedit & decimas de censibus denariis suis & de pullis equarum suarum, de vitulis, de ovibus, de capris, de lana, & decimas de omnibus rebus suis, & decimas de omnibus hominibus supradictarum villarum.* All which was confirmed by the king. It seems, that in *decimas de omnibus rebus* the corn was excepted, according to the first limitation of his grant.

II. TO these might be added more out of the rolls, ^e especially of exemplifications or confirmations. But the store is large that is already delivered. And to conclude it, observe this most notable testimony in a writ of the register and in *Fitzherbert*, that had reference to the common use of those arbitrary grants out of demesne lands at the owner's pleasure, without understanding of which use, I shall doubt no man thoroughly understands the writ, nor the true ground of any writ of *advocatione decimarum*. It is a singular example, and, as I remember, not seconded or especially noted elsewhere in our law books; and therefore I transcribe it whole.

Reus ^f tali iudici salutem. Monstravit nobis venerabilis pater *H. Lincolnienfis* episcopus, quod cum *J. praecentor ecclesiae beatae Mariae Lincoln.* teneat de dono suo omnes decimas dominicarum terrarum suarum, vel dominici sui, de *N.* quas idem episcopus & praedecessores sui episcopi loci praedicti libere conferre consueverunt: prior beatae *Katherinae* extra *Lincoln.* clamans decimas illas pertinere ad ecclesiam suam de *B.* trahit cum inde in placitum &c. Et quia placitum praedictum tangit coronam & dignita-

tem nostram; praesertim cum collatio earundem decimarum ad nos possit devolvi ratione custodiae vel escaetae, quia etiam consimiles decimas conferimus in quibusdam dominicis, & similiter quamplures magnates regni nostri in dominicis suis, vobis prohibemus ne placitum illud teneatis in curia christianitatis, nec aliquid quod in derogationem regiae dignitatis nostrae cedere valeat, in hac parte attentetis, seu per alios attentari faciatis quovismodo. Teste &c.

What can the intent of this be, other than that the bishop, the king, and many other grantees of the kingdom, did usually grant or collate the tythes of their demesnes: Which, because they were so grantable at the owner's will, were, by the meaning of this writ, exempted from the spiritual jurisdiction. But thereof more anon. Perhaps the writ is immediately to be understood of tythes collated in like sort as a church; so that he which collated them, had *advocationem decimarum*, which appears also in the register, as any other conferring a church, had *ecclesiae advocationem*. If not so, whence could the collation of these tythes have original, saving only from the making them severally a kind of benefice (under the name of *decimae separatae*, that is, annexed to no church, as the marginal note in the register well calls them) by arbitrary grant at first of the owner, no otherwise than a church was made a benefice to be bestowed, by the arbitrary ordinance of the patron, at the foundation? Clearly, had not the use of conveyance of tythes severally by grant, preceded in practice, it could not have been, that *quamplures magnates regni*, as the writ says, might *decimas libere conferre in dominicis suis*. Tythes alone could never have been collated like a benefice, had they not been first founded or created as a benefice. And the writ might seem indeed to bear even the character of the time wherein that use of arbitrary grants of tythes was known, as of common practice; which I understand to be about king *John's* time; and that, before the pope's decretals, or other authority, had taken away the laymens challenged liberty of granting tythes severally, according to the former example. And the rather might that conjecture hold, because also the syle expressing the bishop's name, is *H.* which by all likelihood denotes *Hugh* archdeacon of *Wells*, being lord chancellor to king *John*, and bishop of *Lincoln*. But it may be also, that it was had of later time, and at the suit of *Henry of Lexington*, made bishop of *Lincoln* in 38 *Hen. III.* and that, after parochial right was more settled. For notwithstanding the settling of it, and making tythes then payable *de jure communi* to the parish-rector, yet it is certain, that the former grants (what through general confirmations from *Rome*, what through the laymens standing upon their patronages of tythes, and upon the grantees acknowledgment of their first devotions in such consecrations) still continued, and were subject

^a Rot. claus. 6, *John*, r. ch. 107, membr. 12. & rot. 11 *Hen. III.* part. 1, membr. 5.

^b & claus. 17 *Hen. III.* membran. 4. &c.

^c K. in dorf. 16.

^d S. 8.

^e Rot. claus. 6, *John*, r. ch. 107, membr. 12. & rot. 11 *Hen. III.* part. 1, membr. 5.

^f Fleetwood in Commentar. de jure forestarum.

^g Vide rot. cart. 1. r. *John*, membr. 1, cart. 61, & cart. antiq. U. & C. 7. & in fasciculo cart. antiq. num. 80. &c.

^h Regist. orig. fol. 16. b. & Fitz. n. b. 40. N.

(in case the *advocatio decimarum* might come in question) to such a prohibition, until some alteration was therein made, as anon shall be shewed, where we speak of the ancient use of the writ of *indicavit*. But of what time soever the writ was, it is plain, that the ground of it must come from that use of arbitrary consecrations of tythes, which severally also (as in it is supposed) made sometimes a kind of benefices that might be collated at the will of those who were owners of the land whence the tythes were payable. How could tythes severally be collated by any grandees, but from such original examples as are already copiously delivered? A like^a precedent of a prohibition I have seen 7 Ed. I. which, because it so confirms the ancient purpose of that in the *register*, shall be here at large delivered.

Edwardus &c. archidiacono *Wiltshyr.* & ejus commissariis salutem. Cum dilecti nobis in Christo abbas & conventus de *Osney* ex collatione progenitorum nostrorum regum Angliæ percipiant & percipi debeant, & ipsi & prædecessores a tempore collationis illius semper hucusque percipere consecuerint duas partes decimæ garbarum provenientium de dominicis terris *Edmundi comitis Cornubiæ* in *Harewell*, & quorundam tenentium suorum ejusdem villæ in subventionem sustentationis capellanorum & clericorum in libera capella nostra *S. Georgii* in castro nostro *Oxonias* ministrantium, *Rogerus* de *Draytona* persona ecclesiæ prædictæ villæ de *Harewell*, clamans prædictas duas partes ad eandem ecclesiæ suam pertinere, trahit ipsos abbatem, & conventum inde in placitum coram vobis in curia christianitatis, sicut ex relatu plurium accepimus. Quia vero prædictum placitum tangit nos & coronam nostram & dignitatem, maxime cum consimiles decimas in pluribus dominicis nostris conferamus, & etiam plures magnates regni nostri consimiles decimas, quarum collatio ad nos ratione custodiæ devolvi solet, similiter conferant in dominicis suis; & etiam quia cognitio super jure patronatus hujusmodi decimarum ad curiam nostram pertinet, tibi vel vobis prohibemus ne placitum illud teneatis in curia christianitatis. T. meipso apud *Wodestoke* octavo die *Febr.* anno regni nostri septimo.

Here are plainly understood whole benefices of only tythes, to be collated by the king and divers of his baronage; as the tythes of the king's garden in *Windsor* are in ^b record, collated by *Henry* the third; and other like sometimes occur. Neither is that canon of the council of *Westminster* held under *Hubert* archbishop of *Canterbury*, in 2 *Johan. r.* from any other original to be interpreted, then from those common conveyances and grants of tythes and church-livings generally by laymen to monasteries. The words are, ^c *Lateranensis concilii* ^k *tenore perpenso decernimus ne fratres templi, vel hospitalis, sive quicunque alii religiosi ecclesias vel decimas, vel alia beneficia ecclesiastica,*

sive episcopali auctoritate de manu laica recipient, dimissis etiam quas contra tenorem istum moderno tempore receperant &c. For, however, that in the council of *Lateran*, be interpreted, I enquire not how well, of tythes infodated into ^l lay-hands; yet in this kingdom, where those infodations were not, or were very rare (whereof anon more) how can it be well understood but of new grants or arbitrary consecrations of tythes as well not before in *esse*, as of others conveyed by investiture of churches. But touching those conveyances of tythes by laymen, see more in the XIII chapter where we speak of infodations.

III. OUT of those examples of conveyances and arbitrary consecrations of tythes (being but a few, and as an essay only of the multitude of them, which might be found in the lieger-books of other monasteries) may easily be collected, the truth of those assertions in the old year-books, which have, without desert, been taken for fallhoods grounded only upon ignorance. By the practised law, clearly every man gave the perpetual right of his tythes to what church he would, although the canon law were against it; whereof also notice, it seems, is sometimes taken in those conveyances which have the words of *quæ decimari debent*, as if they had said, tythes of all things which by the canon law ought to be tythed, or, *quæ decimari debent more catholico*, as the words are in a charter ^m of about *Henry* the second's time, of *Gilbert* one of the earls of *Hertford*, to the priory of *S. Mary Overies* in *Southwark*, of the tythes of *Capefeld*. And it is like enough, that according to the recitals of those decretals noted in the former chapter, in some places devotion had bred an obedience to the canons in this point; but, that it was general through the kingdom, is most false; and whatever the pope wrote from *Rome*, we know the truth by a cloud of home-bred witnesses. But also those words, *decimari debent* or *solent*, so often occurring, may be understood of such things as used to be tythed when tythes were arbitrarily paid, as among the Gentiles, or Christians; he that offers *de iis quæ offerri solent*, intimates not so much any necessary duty acknowledged by him, as a custom of offering such things, when offerings were arbitrarily made. And although in the book of *Domesday* it be specially found of one *Stori* an auctor of *Walter of Aincourt*, that he might *sine alicujus licentia facere ecclesiam* (in *Darby* and *Nottinghamshire*) in *sua terra* & in *sua feo*, & *sua decimam mittere quo vellet*, as if it had been his singular prerogative, in his possessions of *Granchy*, *Mortune*, *Pinnesteg*, and other manors; yet was that liberty or prerogative as well of building churches as arbitrary conveyance of tythes not already consecrated either by deed or prescription, common, it seems, to all lords of manors or large territo-

^a In codice ms. coenobii Officiensis, in bibl. Camer.

^b Fol. 460. b.

^c Vide extr. tit. de priv. c. 1. in *Lateranensi*

^k In armario Cottoniano.

^m Pat. 16 Hen. III. membr. 7.

^l Roger. de Hoveden, part. 2. tit. de privileg. c. 1. cum & plantare. & in concil. ipso quod plane tantummodo extat in editione Romana & postrema Bini.

ⁿ Extr. tit. de his que sunt a pael. c. 7. cum apostolica.

ices, until about the time of king *John*. For that of tythes; the examples and authorities before cited justify it. For the building of churches (which considered with the arbitrary endowments of them with new tythes, especially belongs also to this disquisition) it was affirmed for a common liberty of the baronage in letters of king *John* to *Innocent* the third, as you may see in the pope's answer to the king. ^a *Quod enim de consuetudine regni Anglorum* (says the pope to him) *procedere regia serenitas per suas literas intimavit, ut liceat tam episcopis quam comitibus & baronibus ecclesiis in feudo suo fundare; laicis quidem principibus id licere nullatenus denegamus, dummodo dioecesani episcopi eis suffragetur assensus, & per novam struendam veterum ecclesiarum iustitia non laedatur.* It was challenged without licence; but the pope allows it to the laity, so that they had licence from the bishop of the diocese, and withal that the new foundations bereaved not ancient churches of their assigned endowments. But after the time of king *John*, few or none of those arbitrary consecrations are found: yet in *Henry* the third's time some were, as you may see in those of fines taken out of the chartulary of *Gisburne*; but remember also they were in the province of *Tork*. Neither were those grants disallowed by either common or canon law here then practised. And in those ^b cases of tythes that occur among the epistles of *John* of *Salisbury*, who lived in time of *Henry* the second, no title is made merely by parochial right; but prescription or consecration are the grounds whereupon they are demanded: and whereas in the case of *Robert Wnegot* before *Adehelm* archdeacon of *Dorchester*, the question was there, *super quibusdam parochianis & decimis*, and the actor produced testimony that he had formerly recovered *jus parochiale quod petebat cum decimis*; it is clear that the tythes were not recovered *jure communi* as they are at this day belonging to the parish-rector, but by special title of consecration or prescription, and the *jus parochiale* there, was the right of having the cure and offerings of the parishioners, which had not necessarily annexed to it the right of tythes by the practice of that time. Whence it came that *parochiani & decimae* are both there mentioned as several demands in the actor's libel; and hereof see more anon in the corollary of the ancient jurisdiction of tythes in *England*; and that admonition of *Theobald* archbishop of *Canterbury* (before-cited) to *Ala* counts of *Warren*, is observable. Is it not apparent that he allows not only the arbitrary consecrations made by the earls, but also reprehends her sharply for not performing what they had therein vowed? But in the ensuing times, after that the canon law had here gained greater strength, which happened soon upon *Innocent* the third his thundering out his interdict against this kingdom, his excommunication against the king, and frightening the subjects with his bulls stuffed with commination, and that against this

very point of arbitrary conveyances of tythes; it soon came to be a received law, that all lands regularly were to pay tythes to the parish or mother church according to the provision of the canons: and therefore upon delegation made by pope *Innocent* the fourth in 49 *Hen. III.* to the priors of *S. Trinity*, and *S. Bartholomew* in *London*, and the archdeacon of *Westminster* for the deciding of a controversy betwixt the abbess and nuns of *Chartris* by *Ely*, and *Robert Passelew* archdeacon of *Lewes*, about some tythes of the possession of the nunnery in *Barington*, it appears that in *Passelew's* libel, no other title is made, but that the land lies *infra limites parochiae suae* de *Barenton*, unde petit dictam abbatissam compelli integre ad solutionem dictarum decimarum cum damnis & interesse &c. and some others like are of that time according to the law that to this day continues, as may especially be found in the books of *Pipewell* and *Osney*. That example is in the chartulary of that nunnery, composed by the cost and pains of *Agnes Aschefeld* abbess there, and *Henry Bukworth* bachelor of the canon-law, about the time of *Henry* the sixth. You may add to the confirmation of this ending of the antienter course of arbitrary consecrations, and the later establishing of parochial right in tythes, that of the *English* monks before cited touching the general council of *Lyons*, held in 2 *Ed. II.* I doubt not but that parochial right was long before for the most part settled; but it is not likely that they had so confidently affirmed such a continuing liberty of conveyance of tythes at the owner's will, had they not known that until about the preceding ages at least, it had been in common practice both of fact and positive law, especially in this kingdom where they lived. Whether this petition in parliament ^c of 6 *Ed. I.* may give any light to that assertion of theirs, I know not. *Nicholas* of *Crainford*, parson of *Gillingham*, complained to the king, *Quod cum foresta domini regis, ibidem sita, sit infra parochiam suam, quod dominus rex decimam foci, venationis, pannagii, & aliorum proventuum ipsius forestae de gratia & pro salute animae suae, & animarum praedecessorum suorum, ecclesiae suae cui de jure communi debentur plene solvi praecipiat, secundum formam supplicationis & exhortationis apostolicae porrectam domino r. apud Gillingham quando fuit ibi ad natale.* What was that supplicatio or exhortatio apostolica? Did not some such thing, coming from *Rome* about the time of the council of *Lyons*, make the monks think it a thing agreed upon in that council? It seems here too, that in the king's case, parochial right of tythes was not yet every where settled, although the tythes were increasing in a parish.

IV. After this establishment of parochial right, new arbitrary conveyances out of lands lying in any parish, were not permitted, but ancient consecrations were still retained, and had confirmation either from prescription or papal privilege,

^a *Innocent. III. epist. decretal. lib. 1. pag. 228.*

^b *Epist. 21. & 24.*

^c *Mt. in biblioth. Cottoniana.*

^d *Supra*

cap. VII. § 1.

^e *Inter facies. pet. parl. 6 Ed. I. in arce Londini.*

which were, by the canons, sufficient title to be pleaded against the common right claimed by parish-rectors. And when this innovation grew in parochial right, then also the jurisdiction which the common or secular law had formerly challenged and exercised in detaining the right of tythes, between the parish and parishioner, grew out of use; and the legal proceeding became to be regularly according to the canons, which brought the practice to be as since it hath continued. But of the ancient jurisdiction more anon. So was it now come to that pass, that no new arbitrary consecrations might be made of the tythes of lands lying in any parish. But yet for such lands as were not parochially limited, the ancient liberty was retained; and although by the canon law the bishop is to have all tythes growing in lands not assigned to any parish within his diocese; yet in the monuments of the common laws, such tythes growing in lands of the crown, are at the arbitrary disposition of the king: such places have been, and, I think, are in divers forests. And hereof says *Thorpe* in 22 *Assis. pl. 75. Il soleit estre lez quant il aver certane place qui fuit hors de chescun parochie come en Englewoode, & hujulinodi, entel case le roy ad & doit aver les dismes de cest place* (& nient evevesque de lieu) a grantee a que luy plest: And relates further, that the archbishop that year made suit to the council, to have had such tythes. But, under favour, this was understood only of the king's granting the tythes of his demesnes occupied by his bailiffs, according as in ancient time every man else did. For whatever the words seem to import, *Thorpe* speaks only of such lands of the possession of the crown; in which case, it must not perhaps be understood so much a part of the royal prerogative, as a right due to the king by common law, in regard of his possession of lands not limited to any parish. Neither doth he affirm that tythes of such places are due to be paid to the crown, but that they are in the king to grant at his pleasure, if growing in his demesnes. But to this purpose is a notable case in the parliament rolls of 18 Ed. I. where *Ralph* bishop of *Carlisle* petit versas ecclesie priorem de *Karlicl* decimas duarum placearum terrae, of the new assarts in the forest of *Inglewood*, whereof the one is called *Linthwait*, the other *Kirkthwait*, quae sunt infra limites parochiae ecclesiae suae de *Alspatrike*, &c. and lays by prescription in his predecessors the tythes of the pannage there, before the assarting or culture. *Henry* of *Burton* also, parson of *Thoresby*, claimed in parliament the same tythes as belonging to his church, and infra limites parochiae suae. And the prior comes and says, that *Henricus rex vetus* (*Henry* the first, it seems) concessit *Deo* & ecclesiae suae beatae *Mariae* *Karlicl* omnes decimas de omnibus terris quas in culturam redigeret infra forestam, & inde eos feoffavit per quoddam cornu cburnum quod dedit ecclesiae suae praedictae &c. Whereupon the king's attorney, di-

cit, quod decimae praedictae pertinent ad regem & non ad alium, quia sunt infra bundas forestae de *Inglewood*, & quod rex in foresta sua praedicta potest villas aedificare, ecclesias construere, terras assartare, & ecclesias illas cum decimis terrarum illarum pro voluntate sua cuiusque voluerit conferre, eo quod foresta illa non est infra limites alicujus parochiae &c. Et petit quod decimae illae domino regi remaneant prout de jure debent ratione praedicta &c. Et quia dominus rex super praemissis vult certiorari, ut unicuique tribuatur quod suum est. *William* of *Vesfi*, justice of the forest beyond *Trent*, and *Thomas* of *Normanvill*, his eccleciator for those parts (for so was the division anciently of eccleciatorships) were assigned commissioners to enquire of the truth, & certificant regem ad proximum parlamentum &c. So are the words of the record. Where the attorney challenges not the right by prerogative, but only in regard that the place being the demesne land of the crown, and not assigned to any parish, the tythes are grantable by the king, as owner, at his pleasure. And so it well agrees both with that liberty challenged by king *John* in the name of his baronage, that they might found new churches at their pleasure in their own fees, before the establishment of parochial right in tythes, as also with the more ancient practice of the kingdom, whereby tythes might not be parochially exacted, nor were so reputed due, but by the owners arbitrarily conveyed in perpetual right. And whereas *Herle*, in 7 Ed. III. fol. 5. a. lays generally, That no man might arbitrarily give his tythes that are not within parochial limits, but that the bishop of the diocese should have them. It seems, he spake suddenly, as out of the canon law, and not according to the law of *England*. And he adds, that it is against reason, que homo ne purra my grantar ses almoignes a que il voudra. And but two years before that of *Herle*, it was adjudged in the king's bench, Quod de decimis grossis priori de *Carcol* & praedecessoribus suis de dominici domini regis infra forestam de *Inglewood* provenientibus & extra quatuordecimque parochiarum limites existentibus per cartam progenitorum domini regis nunc concessis, & per cartam ipsius d. r. nunc confirmatis, &c. a prohibition should be granted against the bishop of *Carlisle*, that claimed them. It was upon a record sent thither out of the parliament, as in the roll appears largely. And *Edward* the first gave such tythes of the forest of *Deu*, as enclosed not within any parish, to the bishop of *Landaff*, by which title the bishop afterwards claimed them; and no question was of that point. But for common or waste ground, the parish whereof is not known, the statute of 2 Ed. VI. hath given the tythe cattle therein depasturing, to the church within whose parish the owner dwelleth.

¹ Extr. tit. de decimis c. 13. quoniam.

² 14 Hen. IV. fol. 17. b. & Brook, tit. dismes 10.

cod. vet. apud V. C. J. Borough regiorum in arce Lond. feciniorum praefectum.

Cumbria.

³ Rot. par. 1 Ed. III. rot. 17. in dori.

⁴ In recept. scaccarii, & in Mich. 1 Ed. III. coram rege rot. 168.

C H A P. XII.

- I. Appropriations and collations of tythes with churches. The corporations to which the appropriations were made, presented, for the most part, vicars. Thence the most of perpetual vicarages.
- II. How churches and tythes by appropriation were antiently conveyed from lay patrons. The use of investitures, practised by lay patrons.
- III. Grants of rents or annuities by patrons only, out of their churches. Of the bishops assent. More of investitures. A writ to the archdeacon antiently sometime sent upon recovery of a presentment.
- IV. Of hereditary succession in churches.
- V. Lapse upon default of presentation grounded upon the general council of Lateran, held in 25 Hen. II. What *præsentare ad ecclesiam* is originally. *Donatio ecclesiæ*.

I. **A**S by consecrations severally, so, with churches, in appropriations, tythes were frequently conveyed, and by express name. As *ecclesiæ de N. cum decimis*, or the like, are usually given *monachis, monialibus, &c. ibidem Deo servientibus, &c.* according to what is before noted of other countries. But this mention of tythes, with churches in appropriations, was rare, or not at all, till after the Normans. In the Saxon times, many appropriated churches are found, and that from between D.CC. and D.CCC. years since, till the Normans. But the charters that conveyed or confirmed them, have usually nothing but *ecclesiæ* and so many carves or yard lands, or so much rent annexed to them, not speaking at all of any tythes transferred with them. For special examples of such antient appropriations, you may see the recitals of the charters of king *Bertulph*, king *Beored*, and king *Edred*, made to the abbey of *Crowland*, and inserted in *Ingulphus*. But after the Normans, in appropriations, most commonly, the church is expressed, *una cum decima* (that is; the tythe annexed or consecrated to it) in *annona*, or in other kind, and the places sometimes are named where the increase of the tythe grew. Such examples are very obvious, especially in the chartularies of *Abingdon* and *Rocheſter*. And, as is before noted, the most common intent (allowed also by canonical confirmation, which sometimes but rarely was added in those elder ages) was, that the corporation whereto the appropriation was made, should put clerks or vicars in the churches so conveyed to them, which were to answer to them for all temporal

profits, as tythes and other revenues (although the churches were distant many hundred miles sometimes from the monasteries; for a church in one kingdom also was often appropriated to a monastery of another) and to the ordinary for spiritual function. The general confirmations that are sometimes found of that time, make it manifest, and for the two provinces, it is not amiss to add here these two examples of it. In 17 Will. I. *Thomas* archbishop of *Tork* makes a general confirmation^a to the priory of *Durham* of all churches either then appropriated to them, or thereafter to be appropriated, and grants and commands, *ut omnes ecclesiæ suas in manu sua teneant, & quiete eas possideant, & vicarios suos in eis libere ponant, qui mibi & successoribus meis de cura tantum intendant animarum, ipsi vero de omnibus cæteris elemosynis & beneficiis*. So, under *Henry II.* pope *Lucius III.* writes to all the monks in the province^b of *Canterbury*, and bids them, that in all churches, in quibus *præsentationem habetis, cum vacaverint, dioecesanis episcopis clericos idoneos præsentetis, qui illis de spiritualibus, vobis de temporalibus debeant respondere*. Where, that in quibus *præsentationem habetis*, can be understood only of churches appropriated (which they enjoyed not *pleno jure*, that is, in which they were bound to allow some competent revenue to a vicar or curate, and had not exempt jurisdiction, nor the power of institution of vicars, without presentation to the bishop) as is plainly known from what follows touching the answering for the temporalities to the monasteries. And in those times, as is already delivered, it was most frequent, to have presentations made by monasteries to their appropriated churches; and the vicar-incumbents or presentees had no more of the profits, notwithstanding the institution, than the monasteries would arbitrarily allow them. Neither followed any disappropriation upon such presentation, however the later law be taken otherwise. Nor was there any perpetual certainty of profits or revenues to their presentees, until such time as the monks, by composition with the ordinaries, or by their own ordinance, which prescription after confirmed, appointed some yearly salary in tythes, or glebe, or rent, severally for the perpetual maintenance of the cure; which salaries became afterward perpetual vicarages. And to these testimonies touching appropriated churches in those antient times, and presentation to them, you may also add that canon^c of the council of *Westminster*, held in the second of king *John* by *Hubert* archbishop of *Canterbury*, to the same purpose; wherewith is agreeing also one of *Othobon's* legatein constitutions, touching filling of appropriations, and making of vicarages; as also the two statutes of 15 Rich. II. cap. 6. and 4 Hen. IV. cap. 12. touching the point of which statute, a bill in the next parliament was again put in, but answered with *soient les statuts est suitez & gardez*.

^a Reg. de Hoveden, part. 1. fol. 361. b.
tegr. cap. auditis.

^b Append. ad concil. Lat. part. 16.
^c Roger. Hoved. annal. 2. fol. 460. b.

^c Panormitan. ad tit. de reſtit. in in-
ter. cap. 1. §. Hen. IV. art. 74.

II. In those elder appropriations, it appears that the church and the tythes, and what else was joined with it as part of the assigned revenue, by the practice of the time passed in point of interest from the patron by his gift (which oftentimes was by livery of a book or a knife on the altar) not otherwise than freehold conveyed by his deed and livery. Neither was confirmation or assent of the ordinaries, as it seems, necessary as of later time. Observe this one example of the church of *Waldren* appropriated to the priory of *Lewes* in *Suffex*, by *Robert* of *Dene*, wherein he, as patron, appoints also the conditions to which the presentee or vicar incumbent of the priory should be subject. *Ego Robertus* de *Dena*, lays the ' deed, & *uxor mea* *Sibilia* pro animabus antecessorum nostrorum, & pro salute nostra, & successorum nostrorum, concedimus Deo & S. Pancratio Latifauensis ecclesiam de *Waldrena* cum terris & decimis, & omnibus ad eam pertinentibus, & cum duabus partibus decimae bladorum de *Calvindona*, ita videlicet ut sacerdos de *Waldrena*, de his omnibus solvat S. Pancratio singulis annis dimidiam marcam argenti. Ipse autem sacerdos per manum prioris S. Pancratii ecclesiam de *Waldren* tenebit, quamdiu caste & religiose vixerit. Quod si crimen incurrerit, iudicio prioris Latifauensis corrigetur aut expelletur. This, about the time of *Henry II.* was made coram duobus hundredis apud *Hundestuph*. Very many other are extant so made, as well by common persons as the king, in the Saxon times of churches, and since, of churches and tythes without any confirmations; saving sometimes that those of common persons are ratified by the king as supreme lord, as also they are too by other lords. For it was not unusual for tenants to have their lords confirm their alienations of all kind of possessions. I know what is said in the later law of the king's power as supreme ordinary for the part of jurisdiction, and I acknowledge it, as also ought; but in those elder times, that was not the matter which made appropriations good, where his confirmation had place, and none was from the bishop; at least it cannot at all be proved that his supreme jurisdiction spiritual was so much thought of in them, although otherwise apparent testimony be of the exercise of such jurisdiction, and of the right of it in the elder ages in this kingdom. But the reason of appropriations so practised by lay patrons only, was the challenged right which in those times they most commonly used in disposition of their churches, as if they had been all donatives by collation, without presentation, that is by investiture from their own hands only, which gave their incumbents real possession of the tythe of the church and all the revenues, no less than presentation, institution, and induction do at this day. For however, not only the decrees both of the pope and general councils, were antiently against that kind of in-

vestiture; but also the provincial or national synods here held, had like canons forbidding it; as in 3 *Hen. I.* the^b council of *Westminster* held under *Anselm* archbishop of *Canterbury*, and *Girard* of *Tork*, ordains, ne monachi ecclesias nisi per episcopos accipiant; and in 25 *Hen. I.* at the same place in the national synod, held by cardinal *John de Crema*, the pope's legate, it was constituted, that nullus abbas, nullus prior, nullus omnino monachus, vel clericus ecclesiam sine decimam seu quaelibet beneficia ecclesiastica de dono laici sine proprii episcopi auctoritate & assensu suscipiat, quod si praesumptum fuerit, irrita erit donatio hujusmodi, &c. And some allowance was given to these canons by the king; Yet it is most certain that the practice was for divers years afterward otherwise, and that churches with tythes were most commonly given by lay patrons, without the bishop's assent or institution, and that as well by filling them with incumbents, as appropriating them to monasteries, chapters, or otherwise. Beside the examples that might enough prove it, and are obvious in old chartularies, the preamble of a decretal of *Alexander III.* sent under *Henry II.* to all the bishops of the province of *Canterbury*, is herein full testimony. Ex frequentibus querelis, says he, didicimus in partibus vestris consuetudinem pravam a multis retro actis temporibus invaluisse, quod clerici ecclesiastica beneficia sine consensu episcopi diocesis, vel officialium suorum (qui hoc de jure possunt) recipiunt minus quam deceat, solliciti cogitantes, quomodo id a patrum sanctorum est institutionibus alienum, & ecclesiasticae contrarium honestati. Unde cum tu frater, &c. Where you see plainly that course of investiture or donation by the patron without presentation, was consuetudo quae a multis retro actis temporibus invaluerat, which shews it to have been then a part of the secular law; though the judgment of the bishops and the pope titles it prava. Agreeing to this, are other testimonies in *Gregory's* decretals, and that in epistles to all the bishops of *England* to forbid it; And it is specially observable, how ill the baronage of *England* took it, when *Anselm* under *Henry I.* would have, through papal canons, inhibited the practice of investitures, used by the king and other lay patrons, which is recorded in an epistle^m of that *Anselm*, directed to pope *Paschal II.* thus speaking.

Domino reverendo & patri diligendo *Paschali* summo pontifici, *Anselmus* servus ecclesiae *Cantuariensis*, debitam subjectionem & orationum assiduitatem. Postquam revocatus ad episcopatum rediit in *Angliam*, ostendi decreta apostolica quae in Romano concilio praefens adivi, ne scilicet aliquis de manu regis aut alicujus laici ecclesiarum investituram acciperet, ut pro hoc ejus homo fieret; nec aliquis haec transgredientem consecrare praesumeret. Quod audientes rex & principes ejus ipsi etiam episcopi, & alii minoris ordinis, tam graviter acceperunt, ut

^a In thesaur. Coroniziano.

^b Guil. Malmesb. de gest. pontific. lib. 3. epist. 45.

^c Videtur 7 Ed. III. fol. 4 b, & effon. & placit. de 10 Rich. I. Rot. 22. Henr. 2. Reginaldi de Angestuin.

^d Guil. Malmesb. de gest. pontific. lib. 3. epist. 45.

^e Extr. de instit. c. 3. ex frequentibus, qui canon plenius habetur in appendice ad concil. Lateran. part. 28. cap. 11.

^f Tit. de iure patr. c. 10. cum laici, c. 11. cura parochial. & c. 21. relatum. vide Roger. de Hoveden. annal. fol. 202. a. J. Sarisbur. poli. erat. lib. 7. cap. 21. & app. ad concil. Lat. part. 15. cap. 2.

^g Epist. Anselm. mil. 129. in bibl. Comoniana.

^h assenserent

afferent se nullo modo huic rei assensum prae-
bituros, & me de regno potius, quam hoc serva-
rent, expulsiros, & a Romana ecclesia se discessu-
ros; unde reverende pater vestrum petii, per e-
pistolam nostram, consilium, &c.

This is in the ms. volume of epistles of *Anselm*, fairly written by *John de Grandison* bishop of *Exeter*, in the year M.CCC.LXIV. in which are above c. more than are published in his printed works. They menaced the archbishop with banishment, and the pope with revolt from his see, only for their withstanding that practice of investiture; whereof, for so much as concerns abbeys, priories, or bishopricks, in giving them by the ring and baston, much testimony is in the story of about that age. And the kings remission of the investitures of those great dignities is frequent; but, for parish churches, of which we here chiefly speak; the common occurrences of investitures mention them but little. But for the use of them known also by the name of institution; see the fine anon transcribed of 33 *Hen. II.* as also specially a commission sent by pope *Alexander III.* to the dean of *Chichester*, touching a parson that was *legitime institutus* a *Wilhelmo nobili viro*, and had resigned *personatum capellano domini*. But this course of investiture by lay men, after *Anselm's* time, began to be of less use; and some, obeying the canons, presented, others still collated by investiture till about *Richard I.* and king *John's* time, whereof more in the next paragraph. To the lay patrons challenged right of such investiture of churches and tythes, belongs specially the granting of rents and such like out of rectories by the patrons only, and the sons or others succession in parish churches after the death of their ancestors, of both which, little known vulgarly, antient warrant is yet remaining.

III. For the first; In the chartulary of the priory of *S. Neots* in *Huntingdonshire*, one *Robert Fitz-walter*, about king *John's* time, gives to the priory six marks of silver, *nomine certi beneficii in ecclesia de Wimbiſſe annuatim percipiendas per manum personae ejusdem ecclesiae. Quare volo*, says he, *ut quicunque in praefata ecclesia de Wimbiſſe ad praesentationem meam vel haeredum meorum persona instituta fuerit, praenominatis monachis S. Neoti de supradicto beneficio vi marcarum fidelitatem faciat, salvo mihi & haeredibus meis jure advocacionis & praesentationis &c.* and divers others such like are. Neither have I met with a precedent of those times wherein the incumbent was grantor, as at this day by the common law, the church being full, I think he must. But most usually a provision by the patron was inserted to this purpose, that the several incumbents should by oath bind themselves to the true payment. Nor was it so necessary to have the ordinary's assent, when that, which the ordinary, by the practice of the later law is to do in his institution, was in frequent practice supplied by the patron's investiture. Out of which may be the better

understood that part of the new canon in the synod of *Westminster*, held under *Richard* archbishop of *Canterbury*, in 21 *Hen. II.* *Nulli liceat ecclesiam nomine dotulij ad aliquem transferre*, that is, that no patron should give his church, as it were, in frankmarriage, or make of it a *donatio propter nuptias*, as the civilians call it, to remain with the husband of his daughter or kinswoman, during his life. How could such a gift have at all been made by presentation, as of later time it is understood, institution or induction? And a most observable example of this matter is in a fine of 33 *Hen. II.* in these words:

Haec est finalis concordia facta in curia domini regis apud *Cantuariam* anno regni regis *Henrici secundi xxxiii.* die *Veneris* proxima post festum sancti *Johannis Baptiste*, coram *Radulpho* archidiacono *Colecestriae*, & *Rogero* filio *Reinfri*, & *Roberto de Witefeld*, & *Michaele Belet*, justiciariis domini regis, & aliis fidelibus domini regis ibidem tunc praesentibus, inter priorem de *Lewes* & monachis ejusdem loci, & *Willielmum* filium *Arthuri*, quem *Richardus* de *Budegintun* possuit loco suo ad lucrandum vel perdendum de advocacione ecclesiae de *Budeketun*, unde placitum erat inter eos in curia regis, scilicet quod prior & monachi remiserunt & quietum clamaverunt eidem *Richardo* & haeredibus suis advocacionem praedictae ecclesiae, ita quod persona quae per ipsum *Richardum* vel haeredes ejus in eadem ecclesia institueretur, reddet singulis annis ecclesiae de *Lewes* IV. solidos, scilicet ad festum sancti *Michaelis*, & ille qui in eadem ecclesia per ipsum *Richardum* vel haeredes suos institueretur persona, post institutionem suam, coram episcopo fidelitatem praestabit quod praedictam pensionem praedicto termino ecclesiae de *Lewes* persolveret, & postea in capitulo de *Lewes* eandem fidelitatem innovabit.

Here it appears, it seems, by the judgment of the king's justices, that the patron had such interest in those times, that he might alone without grant of the incumbent, who came in by his institution and investiture, or confirmation of the bishop, charge the church with a pension. And this, being in a fine, is of authority beyond exception for that age. But the like is in *rot. fin. 7 Rich. I. Lancast.* in a fine levied between *Theobald Fitzwalter*, demandant in a writ of right of advowson against the abbot of *Shrewsbury*, of the church of *Kirkham*, where XII mark rent is reserved to the abbot, with a like clause for the incumbent's fealty for true payment: The like in *fin. 4 Rich. I. divers. comit.* touching the church of *Dacheworth*; Yet also, in that age, the assent of the parson and bishop was sometime had; as in *rot. fin. 7 Rich. I. Staff.* where, upon right of advowson by the prior and canons of *Stanes* against *Alice Hop-ton*, for the church of *Chekelegb*, *Alice & Robertus filius & haeres suus per assensum & voluntatem H. Coventrensis episcopi in cujus diocesi ecclesia illa sita est, & Osberti personae*

¹ in append. concil. Lat. part. 8. cap. 14. tit. de testibus cognitis.

² Roger. Hoved. annal. fol. 310.

ejusdem ecclesiae tunc ibidem praesentium, concesserunt praefatis prioribus & canonicis xx s. de eadem ecclesia de Chekelegh annuatim percipiendos, sine omni contradictione imperpetuum de clerico eandem ecclesiam possidente quicunque ille fuerit, ad duos terminos, videlicet ad Pascha x s. & ad festum S. Michaelis x s. &c. Here the assent of the parson and bishop being both present in court, is inserted in the fine; yet enough examples shew, that it was not, as may be strongly conjectured, thought altogether necessary. But indeed however the right of investitures had been then much exercised by laypatrons, yet in case of clergy patrons, if the church were not of exempted jurisdiction, the bishops more usually instituted: and therefore was their assent the sooner admitted sometimes into the fine; and doublet's also some laypatrons, willing enough herein to obey the canons, after *Anselm* and perhaps before arbitrarily filled their churches by presentation to the bishop. This may be collected especially out of that of the grant of the privilege of institution in churches, made by *Turstan* archbishop of *Tork*, under *Henry* the first, to the archdeacon of *Richmond*, as also out of two decretals from *Rome*, sent by pope *Lucius* the third, under *Henry* the second to the bishop of *Norwich*. And in some other authority both in our year-books, and in the fine-rolls also of the beginning of king *John*, the bishop's assent in such grants of that time is sometimes found. And in that commonly, but without sufficient ground, attributed to *Randal* of *Glanvil* chief justice of *England* to *Henry* the second, the bishops institution is spoken of as a thing of not unknown right upon a recovery in *darrein presentment*, according as the canons require. And in an epistle of *Giraldu* *Cambrensis* (written in those times to *Hubert* bishop of *Lincoln* about his parsonage of *Cestreton*, which he challenged upon presentation of himself made by *Gerard* of *Canvill*, a gentleman of great worth in *Lincolnshire*) the bishops institution is spoken of as clearly necessary, according to the canons, and noted with *episcopus solus honores dare potest*; which, you must remember, was written by one that was fervent for the canons, and had also written against the *avariae consuetudines* or common laws of that time. But these testimonies must be warily understood, and compared with the former and frequent practice of the contrary, which about that time, especially under *Richard* the first and king *John*, it seems, much altered. Neither till about that time can it be found, that the more common practice of laymens investitures ceased. Nor was the bishop's institution presently and uniformly thence used, as of later ages. The authority of the clergy had by that time taken away the use of laymens investitures. Yet was it not clear, it seems, upon the practice that here followed, what dignity of the

clergy should then exercise the institution: For you shall find it sometimes done by the archdeacon, as it was also before king *John*, in some cases where any layman omitted his investiture; as may be gathered out of a decretal, sent ¹ hither from pope *Alexander* the third, to forbid the archdeacon of *Ely*, *curam animarum sine mandato episcopi committere*. And afterward also, in *Pasch.* & *Trin.* 9, & 10 reg. *Job.* a writ is awarded to the archdeacon, as now it ought to the bishop, upon recovery of a presentment. The entry is thus. *Recordatum est per G. filium Petri & Simonem de Patreshull quod Simon filius Richardi, tempore regis Richardi, recuperavit, coram eis & sociis eorum versus Johannem de Kalceto, seisinam advocatōis ecclesiae de Buckworth (in Huntingdonshire) per assensum de ultima praesentatione, ita quod habuit breve quod archidiaconus admitteret personam ad ecclesiam illam ad praesentationem eadem; & ipse Johannes impedivit eam ita quod implacitavit cum per breve papae, & dominus rex prohibuit placitum, & Simon venit & impetravit a rege quod loquela procederet, & quod haberet breve ad archidiaconum de clerico suo admittendo & habuit. T. domino G. filio Petri & Will. de Briwere.* Here twice was the writ of admission or institution sent to the archdeacon, not to the bishop. Perhaps indeed it happened in the vacancy of the see; for the time so falls, that we cannot be sure of the contrary. But admit it were so. Plainly, the archdeacon neither by canon nor common law had any more right of institution, by reason of a vacancy of the bishoprick. And certainly, during the vacancy, the writ should go to the guardians of the spirituality, which by the canon laws, are the dean and chapter, but by the law of *England*, the archbishops in their several provinces, and the deans and chapters only, in case where the archbishopricks are void. And in other places, somewhat afterward also I have seen institutions often by the archdeacon of *Leicester*, while the bishoprick of *Lincoln* was void; which shews, that those times were the infancy of the exact course of episcopal institutions, as they are at this day used. Neither had these any privilege of institution, as the archdeacon of *Richmond* had antiently given him, or the like. At this day, and from long time before, the archdeacon only inducts, as the books and common practice shew. But thereof thus much by the way.

IV. FOR that other, of succession in the benefices of the ancestors; Doublets, that was often when the father, or other ancestor was incumbent and patron, and by that challenged right, of the time, of investiture and sole disposition of the church, would either in his life-time convey the benefice to his son, or heir, by grant, which, by the practice of the time, supplied, it

¹ *Extr. de instit. c. 6. cum venissent edit. Gregoriana.*

² *16 Ed. III. tit. annuities 13. & not fin. 1 Joh. Huntingdon.*

³ *Extr. de offic. archidiacon. c. 4. cum suis & cap. 5. archidiaconus.*

⁴ *Arg. 11 Ed. III. tit. quare non admittit 5. & Fitzh. n. b. 47. l. &c.*

⁵ *Vide 17 Ed. II. tit. briefe 833. 17 Ed. IV. 14. 2. regit. orig. f. 61. a. & 141. a. 17 Ed. III. fol. 21. b. &c.*

⁶ *Hen. III. in matricul. eccles. in archidiacon. Leic. in biblioth. Cottoniana.*

⁷ *p. 461. & 462. & seq.*

⁸ *Extr. tit. de iure iurando. c. 11. tua nos, & de iure par. c. 14. cui auctum.*

⁹ *Lib. 3. cap. 20.*

¹⁰ *In fratribus.*

¹¹ *Arg. 11 Ed. III. tit. quare non admittit 5. & Fitzh. n. b. 47. l. &c.*

¹² *Vide 17 Ed. II. tit. briefe 833. 17 Ed. IV. 14. 2. regit. orig. f. 61. a. & 141. a. 17 Ed. III. fol. 21. b. &c.*

¹³ *Vide extr. tit. de instit. c. 6. & Reg. de Hoveden*

seems, as well a resignation, as presentation, institution, and induction; or would so leave the advowson to descend to his heir, that he, being in orders, might retain the church in his own hands, according as the law then, it seems, permitted. Against this, was a canon made in the national synod at *Westminster* in 3 Hen. I. *Ut filii presbyterorum non sint haeredes ecclesiarum patrum suorum*. And another in 25 Hen. I. held under the pope's legate: *Sancimus* (as the words are) *ne quis ecclesiam sibi sive praebendam paternam vendicat haereditate, aut successorem sibi in aliquo ecclesiastico constituat beneficio*. Without that challenged right of investiture supposed in the incumbent, having also the patronage, which supplied all that the patron, bishop, and archdeacon at this day do in filling a church, how could any parson make to himself a successor or an heir, to have colour to claim the incumbency from his ancestor? To this purpose may be well remembered a passage in a verdict found in *rot. placit.* 6 Rich. I. *rot.* 1. of such a kind of conveyance of S. Peter's church in *Cambridge*. The words are; *Juratores bene sciunt quod quidam Langlinus qui tenuit ecclesiam illam, & qui fuit persona illius ecclesiae, dedit ecclesiam illam, secundum quod tunc fuit mos civitatis Canteburgiae, cuidam parenti suo Segario nomine, qui illam tenuit per lxx annos & plus, & fuit persona illius ecclesiae, & ipse postea dedit ecclesiam illam Henrico filio suo, qui illam tenuit per lxx annos, & ipse in ligea potestate sua dedit illam hospitali Canteburgiae per cartam suam, & idem hospitale habet ecclesiam illam*. They directly find the custom of the city to maintain the conveyance, supposing, it seems, that the custom would help the last grantor's title, although the common law, which had by that time received some change herein, by force of the papal decrees, should not have allowed it. I know, in the canons another thing is also understood in this matter of succession, that is, the irregularity of the son of a clerk; but that can extend only to the matter of illegitimacy upon marriage forbidden to the clergy. For which point alone, the bishop's refusal had been the best help, but that indeed the other kind of disposition of churches by investiture, prevented his refusal when presentation was not made to him.

V. But after such time as the decretals and the increasing authority of the canons, about the year m.cc. had settled the universal course here of filling of churches by presentation to the bishop, or, as it seems sometimes it was, to the archdeacon, or to the vicar of the bishop, or guardian of the spiritualities; that use of investitures of churches and tythes severally or together, practised by laymen, was left off, and a division of ecclesiastical and secular right from

thence hath continued in practice. Neither did the king afterward, much less common persons, fill their common parochial churches without such presentments from bishops. Parochial churches; for of special donative chapels we here speak not; Neither were appropriations of churches and tythes afterward allowed, that had not a confirmation from the ordinary immediate or supreme. And in the same age also came in the law of the lapse, whereby the bishop is to collate after six months upon the patron's default, it being before at his liberty to fill his church at his pleasure; neither was he confined to any time. That time of lapse was, according as the use of presentation grew by degrees settled, received into the laws of *England* out of the general council of *Lateran*, held in 25 Hen. II. under *Alexander III.* to which, four bishops, according to the ancient use of this kingdom, that is, *Hugh* bishop of *Durham*, *John* bishop of *Norwich*, *Robert* bishop of *Hereford*, and *Reynold* bishop of *Bath*, were sent as agents for the church of *England*. By that council, after vacancy of six months, the chapter is to bestow those churches, which the bishop, being patron, had left so long void; and upon their default, the metropolitan. But no word is of lay patrons in it. Yet by reason of the authority of that council, and of a decretal of the same pope, which speaks of like time upon default of lay patrons, it hath been since taken here generally, that after vacancy of six months, the next ordinary is regularly to collate by lapse. Which perhaps was received for a law, to continue as it hath done, in the council or convocation at *Pipewell*, held in the first of *Richard I.* and some ten years after that general council of *Lateran*. For in that of *Pipewell*, the principal thing in hand was the providing for churches upon death of their pastors. *Habitus est*, saith *Ralf de Diceto*, dean of *Pauls* under king *John*, *generalis conventus juxta dispositionem regis & archiepiscopi xvi. kal. Octobris apud Pipewell, ut de consilio vacantium per Angliam ecclesiarum haberetur tractatus*. I know it was for many churches then void. But it is like enough, that according to the general council, this law was then here received: But that's only a roving conjecture, and so I leave it. And as in the canon law the council of *Lateran*, which must be understood that of *Alexander III.* is commonly affirmed for the authority of the original of the right of this lapse in the case of bishops specially and chapters; so is it, in ancient monuments of our laws, also in the case of lay patrons. *Ante concilium Lateranense*, says *Bracton*, *nullum currebat tempus contra praesentantes*. And in *placit. de banco Mich.* 3 Ed. I. *rot.* 105. *Staff.* the bishop of *Coventry* and *Litchfield*, pleads a collation by lapse *autoritate concilii*, against the prior of *Landa*, to

¹ Videf. extr. tit. de jure patron. c. 11. consulti. &c. & tit. de filiis presby. passim. & tit. de patris c. 1. accepimus. & tit. de testibus c. 7. ex parte. & append. concil. Lau. par. 1. cap. 12. Hereford. episcopo & abbati de Forde. Nec omnia eisdem appendicis. par. 11. cap. 11. & par. 18. cap. 4. & 8. par. 49. cap. 14. & par. 50. cap. 60. ² Vide rot. par. 8. Joh. 5. membr. 1. alibi saepe in archivis, quae ad illius tempora spectant. ³ Ed. III. 23 b. 1. Ed. III. fol. 11. b. 10 Ed. III. fol. 50. a. & vide casum episcopi Lincoln. in comment. a. &c. ⁴ Vide Reg. de Hoveden. an. 1179. ⁵ Extr. tit. de suppl. prael. negl. c. 3 & 4. de conc. praeb. c. 5. &c. ⁶ Lib. 4. tr. de adu. ult. praef. cap. 6. §. 3. ⁷ Extr. de jure patronat. c. 2. 1. exam re. ⁸ Extr. tit. de placit. Reg. de Hoveden. par. 1. annal. fol. 410. b. & extr. tit. de officio judicis ordinarii c. 4. cum vos. Ante concilium papa Alex. III. illud in fallor rescipit, & locum huc adfert.

the church of *Patingham*. And in the same plea rolls of *Pafch.* 5. Ed. 1. rot. 100. *Lin.* in a *quare non admittit*, by *Eleanor*, the queen mother, against the bishop of *Lincoln*, for the church of *Orkefhow*, the fix months and the computation of them (which is there adjudged according to that in *Catesby's* cafe) is referred to *concilium apostolicum*, which can be no other than that of *Lateran*, however the printed copy of that which we commonly call *Breton*,¹ talks of the council of *Lions* for the director of the lapse, whereas indeed the mss. have for *de Lions*, *de Laur.* which is doubtless for *de Lateran*; Yet also in the rolls of the common pleas of *Pafch.* 9. Ed. 1. rot. 58. *Suthampt.* the archbishop of *Canterbury* defendant in a *darrein presentment*, against the abbot of *Lyra*, pleads that the church of *Godeshulh*, *est plena ex collatione ipsius archiepiscopi ratione concilii Lugdunensis*, and being demanded by what article of the council, would not thereto answer, whereupon, after long deliberation, judgment is given for the abbot. But in the same plea the law and custom of *England* for the fix months time of lapse (which they call there *consuetudo regni Angliæ*) is referred to a council; but none is specially named saving that of *Lions*. But although from canonical authority the lapse was thus received into our laws, yet it hath been no otherwise than the baronage of *England* would permit it. For the canons otherwise, as at this day they are, give but four ¹ months to a lay patron, and fix to an ecclesiastick, which difference, the law of *England* would never permit; as also neither that of the right of collation which the chapter is to have upon default of the bishop, however the pope would have put it here in execution according to the words of the council, which you may see in the authorities before noted out of the text of the canon law. And therefore the law of lapse is well referred rather to ^m *consuetudo regni Angliæ* (by which title, other parts of our ⁿ laws were often named that were of later beginning) than to the council, although thence doubtless, as is shewed, it had its original. But although now, what through the decretals and other canons against laymens investitures, what by reason of the law of lapse, the patrons former interest or challenged right, was much diminished in the church, and the disposition of the revenues of it (for it followed also that the ordinary's assent was requisite) yet the *formulae* or precedents used from ancient time in the recovery of presentations still retain, to this day, characters in them of that investiture. As the *quare impedit*, that is, *Præcipe A. quod iuste, &c. permittat B. præsentare idoneam personam ad ecclesiam de N. quæ vacat & ad suam spectat donationem, &c.* Where *donatio* still favours of the ancient right of investiture; agreeing whereto, is that of *ecclesiam* ^o *concedere*, used elsewhere in our law, and attri-

buted to the lay patron. Neither doth *præsentare ad ecclesiam* originally denote otherwise than the patron's sending or placing an incumbent into the church, and is made only of *re-præsentare*, which, in that council of *Lateran* and ^p elsewhere, occurs also for *præsentare*. *Re-præsentare* is properly to restore, give back, or repay, as *reddo* or *repræsto*, whence *præsentare* taken in the barbarous times denoted as *dare* or *donare*; So that *idoneam personam ad ecclesiam præsentare* was all one with *idoneam personam ad ecclesiam dare* or *donare*, or in *ecclesia constituere*, or *habituare*, as ^q the apostle's word is to *Titus*, where he bids him *ἐπιτάξαι καὶ τοὺς καλὸς καθεύδωντας*, that is, *appoint, or constitute*, or indeed *present priests* or incumbents in every city. For he that there should turn it by *present*, might so keep the property of the word in both tongues, though not as *present* is now restrained. This is justified out of an old glossary that turns *repræsentare* by *ἀνταρχειν*; for then clearly *καθεύδωντας* is *præsentare*; While *præsentare* so signified also in practice, that is in the time of the use of lay investitures, all churches so given were properly donatives, which attribute hath been since restrained, chiefly to such free chappels as the ordinary hath no interest in, but are collated or given by the act only of the patron. And this interpretation of *præsentare* is justified also ^r out of the *quare impedit* upon a right of collation, which is but a donation, by the bishop, wherein the words are also, *quod permittat præsentare ad ecclesiam, &c.* Donation, which is merely as investiture in regard of the bishop, is there called presentation. So also is the law in the king's cafe and of common persons, being disturbed to collate by letters patents to their free chapels or donatives. The writ in those cafes is only *præsentare*, which confirms that it denotes donation or investiture. But in the counts upon such writs, the special matter must be discovered. The like law is in the cafe of him that hath the nomination of the clerk. His writ is also *præsentare*, although another have the right of that which is now known by the bare name of presentation. Nomination indeed, or *ἐντολή*, being the true and eldest name found in the laws belonging to the ^t church, that denote filling or presenting to a church, in that sense as presenting is taken for giving or investing. For, in the primitive times, when the patron had founded his church, he nominated whom he would have received into orders for the serving of that cure; and then if the nominated were found worthy, he was received into orders for that purpose, which ordination turned afterward into episcopal institution, as is before declared. That nomination was indeed as investiture or giving the church. So is the word used in the laws; and agreeing to them is the purer time of *Latin*, wherein *nomino* ^u is for giving a place or office that is void. And

¹ Coke report, part. 4. fol. 62.

^m R. egist. orig. fol. 42. b. inter prohibitiones.

ⁿ Glanvil. lib. 6. cap. 17. alibi item scilicet in archivis quæ venustiora Richardi I. aut initii Johannis tempora spectant, & vide Roger. de Hov. edn. fol. 42. b. & par. 3. Hen. III. part. 2. men. b. 2.

^o 31. In Laceranens. §. 2. & tit. de privileg. c. 1. & Hostiens. summ. tit. de capella monachorum & scepius.

^p cap. 1. comen. 4.

^q ad Brut. 7.

^r Chap. 62. des exceptions fol. 225. 2.

^s Vide 19 Ed. II. tit. briefe. 242. 19 Ed. III. fol. 55. b. regist. orig. fol. 98. a.

^t Extr. tit. de censibus c. 11. cum clerici & tit. de prob. & dig. c. 31.

^u Epist. ad Tit. c. 1. comen. 4.

^v C. unico §. 1. de iure part. in 6.

^w C. unico §. 1. de iure part. in 6.

^x C. unico §. 1. de iure part. in 6.

^y C. unico §. 1. de iure part. in 6.

as these phrases of the writs taste of the ancient right challenged by the patron, so do some assertions in our year books of later time; As that of entering^a into an advowson by entering into the church; of passing an^b advowson by livery of seisin at the church door; of the patron's entering into the place^c of foundation if the church cease to remain hallowed, and the like. And to like original may you refer those of the kings presentations, which have *dedimus & concessimus* in them yet retained, although the force of the words by the later law, make but only a^d presentation. But the law is now settled. Neither with us hath the patron alone now any prerogative or direct interest in the church or the revenues, besides his right of advowson or presentation to the bishop, by whose institution and the archdeacon's induction, every church regularly is to be filled. Neither, for ought I have heard, hath he in our law any of those *droits honorifiques*, which the French allow him in precedence, seats, and the like. These particulars of benefices and advowsons had here their place, both because in the ancient conveyance of them either by investiture, to an incumbent, or by appropriation, the revenue that was in tythes passed by express words, and that in point of interest from the patron; as also in regard that, at this day, the patron of a parson prohibited by *inducavit*, to sue in the spiritual court for the fourth part of the tythes of a church, may have his *droit d'avowson de dimes*. It was requisite therefore to add these not vulgar or obvious notes of the advowsons, in this discovery of the ancient conveyance and interest of tythes.

CHAP. XIII.

- I. Infeodations here into lay hands since the statutes of dissolutions. Of infeodations before that time in England. Somewhat more of the original of laymen's practice in arbitrary consecrations or infeodations.
- II. Exemptions or discharges of payment originally by privileges, prescriptions, unity, grants or compositions, and by the statutes of dissolutions.

FROM those arbitrary consecrations, and frequent appropriations of tythes (whereof we have hitherto made mention) to monasteries or other religious places, as colleges of regulars, chantries and free chapels, came the present and common infeodations of them into lay hands, which began in the age of our fathers. For, the portions of tythes conveyed to them out of closes, parts of manors, and whole demesnes, by the owners, together with the tythes granted and possessed with appropriated churches, were first by the statute of dissolution

of monasteries in 31 Hen. VIII. and by that other of 1 Ed. VI. given to the crown, and from thence granted to laymen, whose posterity or assigns to this day hold them with like limitation of estate, as they do other inheritances of lands or rents. And, for them, have like remedy by the statute of 32 Hen. VIII. cap. 7. by real action, as *assise, dower*, or other originals, as for lands, rents, or other lay possessions, by the common law they might have. But although in other states these infeodations or conveyances of the perpetual right of tythes to laymen, be very ancient and frequent also; yet no such certain or obvious testimony of their antiquity, is in the monuments of England, as can enough assure us, that they were before the statute of dissolutions in any common use here. But some were, and, for ought appears in the practice of the time, many more might equally have been. And what scruple was there, but that long before the general dissolution of monasteries, Henry V. might, by the law of the kingdom, have made infeodations into lay hands, as Henry VIII. did, of all tythes belonging^e to the priors aliens, whose possessions were given to him by parliament: he had them settled in the crown in fee, and afterward disposed of them to other ecclesiastick corporations^f at his pleasure, no otherwise than of other lay possessions. By the way, we understand, in these infeodations, by the name of laymen, only such as were not either in orders or professed in religion; for otherwise all the possessions of tythes enjoyed by nuns and the like, that were indeed lay (though not commonly called so) might be comprehended under the name of infeodations. But that some were here; observe that of Odo bishop of Bayeux and earl of Kent, which is before cited out of the lives of the abbots of St. Augustines in Canterbury. The words are *decimas aliquas quas mei fideles habebant, &c.* What can that be, according to the words, other than tythes that were in the hands of some of his tenants? You may add that of Robert S. John, cited before out of the book of Bosgrave, where he had, by the gift of his brother William, certain tythes, which he gave to the priory, for maintenance of a fourteenth monk. And observe the rest of the deed there. So out of the book of Osney it appears before, that *decimatio* Nicholai de Stodeham quam Fromundus capellanus tenebat, is granted by D'Oily. Had not D'Oily this from Stodeham? Or was Stodeham here one of his bailiffs or farmers, whose tythe he granted as lord or according to covenant with the lessee? Other such occur sometimes. And perhaps, *decimæ hominum meorum*, and the like granted, may suppose a title possessed in the tythes by the lay grantor. And in the same book of Osney, in a passage written in a hand of about Hen. V. touching the conveyances of tythes by laymen to monasteries, it is related, that he that wrote it, saw

^a 18 Ed. III. fol. 16. 2.
pedis 60.
Cottoniana.

^b 43 Ed. III. fol. 1. b.
^c Rot. parl. 2 Hen. V. part. 2. art. 9.

^d 5 Hen. VII. fol. 37. a.
^e Vide cart. 2, Hen. V. part. 2. num. 3. c. 7.

^f Vide 19 Ed. III. tit. Quare im.
^g In epistoloth.

quendam Rogerum D'Oily, *dominum cujusdam partis de Bampton in episcopatu Lincolnienſi, ſuis decimis ita uti, ut nunc uni nunc alteri de ſuis valettiſ iſſas conferret annuatim, qui ſibi in diverſis officiis miniſtrabant*, until afterward he erected a chantry with them in the church of *Bampton*. Theſe grants to his valets, plainly were as infeodations. And what elſe was in that known caſe of *Herne* and *Pigot* in *Mich. 39* & *40 Eliz.* but an ancient kind of infeodation, at leaſt an inheritance of tythes from immemorial time in a layman? That, and other like to it, might begin upon real compositions, and ſo the tythes be derived out of the church. But regularly, I think, at this day no kind of infeodation is here allowable in lay mens making title to a perpetual right of tythes (except only by the later ſtatutes of diſſolutions) unleſs it either be derived from ſome old grant of diſcharge from the parſon, patron, and ordinary, in which caſe, he to whom the infeodation ſhould be made, could have it only as a lay profit iſſuing out of the diſcharged land, or joined with a conſideration to be given for maintenance to the parſon, by him that receives them; and this either from time immemorial, or by ancient composition. So I take the meaning of our reverend judges to have been touching this point. In ſum then, we may affirm, that ſome ſuch ancient infeodations have been in *England* as in other ſtates; but, that of later time none are allowable (if derived from ^c other ancient original, than from the ſtatutes of diſſolutions) unleſs they be antiently derived out of the church firſt by diſcharge, or appear to be but as a reward given in pernamcy, or as conſideration for a penſion, or other competent maintenanc, yearly payable to the parſon. Which withal well ſtands with the common opinion of the original of ſuch infeodations; whereof we have already ^f ſpoken. And whereas it hath been reſolved, that without theſe reaſons, a layman was not here capable, at the common law, of tythes by pernamcy; it well agrees with a decretal of ^g *Alexander III.* which forbids one that married a parſon's ſiſter, to enjoy a tythe given him by the parſon, as for the marriage portion, although the parſon were ſtill living. But alſo, that we may not defraud you of any teſtimony of former times, that may ſeem obſervable touching theſe infeodations, whereof ſo few examples, and ſo little mention is in the monuments of *England*, take this ſpecial diſquiſition, written in a hand of about *Henry V.* in the book of ^h *Oſney*, which would as well give light to the courſe of arbitrary conſecrations, before largely opened, as to theſe infeodations, if it were of ſufficient credit. But you ſhall firſt have it compendiouſly delivered, and then judge of it. This title is put to it; *Qualiter laici ad id privilegium pervenerint quod locis religioſis illas (decimas) conferre poſſint*. Then ſays he that writes it; he had heard from a good civil and canon lawyer, that had been preſent at the diſ-

putation of the point, in a caſe happening between a religious houſe and a parſon, for tythes in the parſon's pariſh, who claimed them *jure communi*, that the advocate for the religious houſe, being put to make a ſpecial title againſt the parſon's common right, told the court a long ſtory of eaſtern holy wars about *Pipin's* time; and interpoſed ſomewhat of *Charles Martell*; and concluded, that the pope and the church every where granted, in reward to the chriſtian princes, for their barons, knights, and gentlemen, that ſpent their bloods, labours, and eſtates in thoſe wars, the privilege of arbitrary diſpoſition of the tythes of their lands; by reaſon of which grant, they afterward made not only arbitrary conſecrations of them; but alſo infeodations into lay hands; according as the common opinion among the canonists is too confidently received at this day. Then he tells us that before remembered, of the tythes in *Bampton*, and cites ſome texts out of the decretals, that touch infeodations. Next he relates, that among the princes of the holy war, about *Martell* and *Pipin's* time, the duke of *Normandy* was a ſpecial one, whence he had alſo that privilege touching tythes, *pro ſe ac ſuis*, as the words are. And laſtly, to bring it into *England*, he thus concludes; *Et cum dux Normanniae Willielmus ad conſequitionem Angliae veniſſet, quidam miles ejus Robertus d'Oylleye nomine mallens ſuas decimas Deo commendare quam contra naturalem eccleſiae conſuetudinem iſſis uti, eas eccleſiae S. Georgii, quam in caſtris Oxenford conſtruxit, contulit, et poſtea ad monaſterium Olney per dioceſanum & capitulum Lincoln. ac etiam per advocatum canonicos devenerunt*. But it all ſtales of nothing but ignorance. For what touches *Martell* and his time generally, enough already is ſaid. And ſee but what a bold ignorance here was, to tell us, that the duke of *Normandy* was one of the greateſt (*perſonis regnu exceptis*, as his language is) that went in the holy war, in ſuccurſum eccleſiae Romanae, in thoſe times of *Pipin* and *Martell*? I would he durſt have told us alſo who had then been duke of *Normandy*. Neither that title of dignity, nor that name of the country, were, till about c^t. years after *Martell*, at all known. The territory being then under the *French* kings, who long after gave it to the *Normans*, and erected it into a dukedom. Indeed the duke of *Normandy* had good place in the later holy wars, about m^c.xv. But did not that make this advocate ſay, that the duke of *Normandy* was a ſpecial prince in the other alſo of *Martell's* time? Such of the later middle times ſtand not much upon the mingling of ſtorics, that diſſer in themſelves even many whole ages. Beſides, he tells us of ſtrange princes names of the eaſt, that made the war againſt the church. Plainly, the moſt pretended cauſe of the reſt that cr^t herein as much as he doth, is the *Saraceneſ* war in *Martell's* time, and that out of *Spain*, not from the eaſt.

^d Report 7. fol. 41. a.
^e In biblioth. Cottoniana.

^f Vide in d. commentario, libid;

^g Cap. 6. ſ. 4.

^h Extr. tit. de arbitris c. 3. pervenit ad eos

And had it been so under *Martell's* time, as it is usually affirmed; what had that been to *England*? But you see his providence for that matter, where he derives it from the duke of *Normandy*. But what though there had been some such duke of *Normandy*, whose successor had afterward either conquered or inherited *England*? Had therefore the old supposed privilege of retaining or disposing of tythes, been thence communicated to his subjects of *England*? And that to the loss of the church here, that never could have gotten good by the supposed cause of the privilege? All the canon and civil law that the advocate had, could never have proved such a consequent. It will still remain most probable, if not clear, that what infeodations were in *England*, had their original as well out of the right of arbitrary disposition of tythes challenged by the laity, without the grant of the pope or church, as out of compositions or conveyances from the clergy; according as in other states. For no sufficient story, no credible monument, no passage, or testimony of worth, can justify that general right of retainer or disposition to have given by the clergy, or pope, upon any cause whatsoever; though the canonists and others that follow them, cry against it, *usque ad ravim*. The use of infeodations, before those latter holy wars, we have already shewed. And that no use of them could be about *Martell's* time, is not less apparent, by what is also before delivered. But beside this blind testimony of the ground of consecrations or infeodations; for *England* especially, you may take that, as it is, also of *Lindwood*, who thus speaks touching the portions which religious houses had. *Hæc portiones* (saith he) *potuerunt pervenisse ad locum religiosum de concessione etiam laici, cum solius dioecani consensu, de decimis, vel proventibus quas laicus talis ab ecclesia alia habuit in feudum ab antiquo*, according to that in *tit. de his quæ sunt a prælatis sine ass. cap. c. cum apostolica*. And he adds, that this is only true, if those tythes were infeodated before that council of *Lateran* of M.C.LXXIX. And then concludes with, *Nam ante illud concilium bene potuerunt laici decimas in feudum retinere, & eas alteri ecclesie vel monasterio dare. Non tamen post tempus dicti concilii*. For his interpretation of the council, enough before, towards the ends of the VI. and X. chapters. But doth not *Lindwood* here suppose antient infeodations of tythes, at least created by churchmen, in *England*? Doth he not thence fetch the original of portions belonging to religious houses in *England*? Commonly, though he wrote as a canonist, yet he adds the special custom of *England* if he speak of any canon law, which he thinks had not place here. But he excepts not *England* in this, but implies it; Therefore doubtless, he supposed a common use of antient infeodations among our ancestors; But I doubt he had not better ground for it, than what he found in others of his profession, that had remembered the frequent use of infeodations in

other states before that council: and he so applied it equally to his own country, and with them takes the infeodations to have had original only from the grants of churchmen. Therefore I value his testimony here but as of a common canonist, and not sufficient to satisfy us touching our own country: neither in his age were the particulars of practice of the time before that *Lateran* council, or of the time of creation of infeodations in other places, enough known among lawyers. I add only one note out of *Bracton*, that may touch tythes infeodated or turned antiently here into lay-fee, and conclude this matter. He ^k speaking of land demised and recovered by the legary, tells us some opinion was of his time, that such land after the recovery, *iterum incipit esse laicum feudum & non ante; quod non erit de decimis, cum semel efficiantur laicum feudum; nunquam reincipient esse decimas; & hæc vera sunt secundum R. & alios*. Did not he here suppose lay infeodations of tythes in *England*? Let the reader judge. By the way, I note, that passage is corrupted in the print: the beginning is *item* for *iterum*, and that *R. & alios* (which I think stands for *Roger de Thurbekley* a great judge of that time) is *biasios*; but according to my ms. *Bracton*, I have thus altered it. You may consider also if some infeodations came not out of laymens enjoying of whole churches with their possessions about the *Norman* conquest. It is frequent in *Domesday*, to find that such a layman *tenet ecclesiam* of such a place, and sold it to such a one: and in the claims of *Yorkshire* there, the entry is *super ecclesiam S. Mariae de Moslege habet rex medietatem elemosynæ festorum S. Mariae quæ jacet ad Wackefeld. Omne aliud habet Ilbertus & presbyter qui ecclesie servit &c.* Where tythes were in that time annexed by continuance of payment or consecration to churches, perhaps they might in like manner as these offerings or whole churches, come into the lay hands. But I leave this to the judgment of my reader. And hercof thus much.

II. NOW for exemptions, or discharge from payment; We have antiently had them here, and still retain some of them in the practised law; and that originally either by privileges, prescription, or grants, and compositions, and unity of possession. The privileges have been either such as were especially allowed and limited to the orders of the *Templars*, *Hospitalers*, and *Cisterciens*, by the general council of *Lateran*, held in the seventeenth of king *John*, of which more particular narration is before made; or by new bulls for the discharge of this or that monastery or order, at the pope's pleasure. By reason of the first kind of privilege, those three orders held their lands discharged of payment, so long as they manured them in their own occupation; at least all such lands as they had purchased before the general council. And by the second kind sometimes whole orders were dis-

¹ Tit. de locato & conducto c. licet bona verb. portiones.

² Lib. 5. traçt. de exceptionibus. cap. 13. fol. 40. b.

charged,

charged: As for example, that bull to the *Præmonstratenses* in general, given by pope Innocent the third, grants them that of their own culture or other improvements they should pay none. Sometimes special monasteries; as in that of the same pope to the abbey of *Chertsey*. *De novislibus vero quæ propriis manibus aut sumptibus colitis, aut de vestrorum animalium nutrimentis, sive de hortis & virgultis, aut piscationibus vestris, nullas a vobis decimas exigere, vel extorquere præsumat, sed eas elemosinæ aut pauperibus monasterii vestri, juxta quod tu fili abbas postulasti a nobis, præcepimus assignari.* What force by the common laws of this kingdom, such a papal privilege in ancient time alone had, I abstain here to dispute: and although other examples enough might out of originals be brought of the like; yet I touch not any of them neither, lest unawares I might give occasion of some private controversy. But they had their force in the canon law here, and being so allowed in allegations against tithes for tythes, were strengthened also at length (especially those which were of the antientest) with prescription of time; inso much, that from them originally divers lands of dissolved monasteries remain to this day discharged of payment. But in 2 Hen. IV. cap. 4. an act of parliament is made against those of the *Cisterciens* here, which purchased bulls of exemption for their demised lands. And those of the order, and others, putting such bulls in execution, are made thereby subject to the punishment contained in the statute of 13 Rich. II. of *præmunire*. Discharges by immemorial prescription of paying no tythes (of things commonly and of their nature tytheable) nor any thing in lieu of them, are by the later common law, since their parochial right established about the time of king *John*, allowed only ^a to spiritual persons, but to no layman. The laity being since that time held incapable of tythes both by pernamy (saving in such a special case, where continual consideration was given to the church, as in that case before of *Herne* and *Pigor*) in their own right, as also by discharge upon bare prescription alone, saving only in cases within the statutes of dissolution of 31 Hen. VIII. and 1 Ed. VI. and the statute of 32 Hen. VIII. that warrants common infeodations of them. And so is the practised law of this day. For, by those statutes, lay-patentees of lands or tythes have like privilege of discharge and title as the spiritual persons, whose corporations were by them dissolved, before the dissolution enjoyed. Of the *Hospitalers* dissolved in 32 Hen. VIII. I purposely abstain to speak. To this of prescription, may be added that of unity of possession. For if any religious house dissolved in 31 Hen. VIII. held the rectory of *Dale* and lands in the parish immemorially, paying no tythes, this unity discharges also the parsonages at this day, in such fort as the monasteries were discharged. But by compositions and grants every man, as well lay as spiritual,

by the common law (before the statute of 13 of *Elizabeth*, made against leases and grants of parsons) might be discharged of tythes; as if the parson, patron, and ordinary, joined in it to the parishioner either for consideration continuing, as in real^o composition, or for other arbitrary causes not appearing to posterity, as in grants by all three, or rather in grants by the parson, and confirmations by the patron and ordinary. And it is provided by the statute of 2 Ed. VI. cap. 13. *That no person shall be sued or otherwise compelled to yield, give, or pay, any manner of tythes for any manors, lands, tenements, or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription are not chargeable with the payment of any such tythes, or that be discharged by any composition real.* But although a layman may not be discharged of all payment by meer prescription (unless he begin the prescription in a spiritual person) yet for diminishing the *quota* in payment only of a less than the tenth, he may ^p prescribe, that is, *de modo decimandi*; and to that purpose an immemorial custom of a whole town or manor holds place at this day. So was the law ^q antiently also. Beside these discharges, some may here expect that part of our laws, which with us (as the *Philippine* in *France*, and the *Caroline* in *Spain*) discharge some things from payment of tythes, and seem to permit some customs *de non decimando*. But for that matter, so much as upon consideration was thought fit to be sparingly laid of it, is referred to the passages in the next chapter, that touch antient prohibitions *de non decimando*. Neither indeed doth that part of our *English* customs belong to the title of exemption or discharge. For exemption and discharge are properly singular rights to this or that person or land, and against the current of the practised law. But those things touching which any such prohibitions *de non &c.* by our law should be granted, are supposed generally, according to the reasons and practice of the laws of *England*, of their own nature, not tytheable. So that not so much a discharge is found in that course, as a prevention of an unlawful charge, which the canons would lay upon that, which the laws of the kingdom account not at all, in its own nature, chargeable. But thereof somewhat more anon.

C H A P. XIV.

- I. *The jurisdiction of ecclesiastick causes, in the Saxon times, exercised by the sheriff and the bishop in the county court; and among them that of tythes also was then to have been there determined. The bishop's consistory severed from the county court by William the first.*
- II. *After the Normans, original suits for tythes, were as well in the temporal courts as*

¹ Innoc. III. in epist. decret. lib. i. pag. 303.
rep. part. 2. fol. 44. & *Enchiridion* de hoc. 41. G.
prohibition. §. 6. & rep. 2. part. fol. 44.

^a Ibid. lib. 2. pag. 410. Videbis extr. tit. de decimis. c. 3. ex multiplici.

^p Regist. orig. fol. 38. b. *Finch* ubi supra.

^q 2 Ed. IV. fol. 14.

¹ Vide lib. instrat. nov. tit.

- in the spiritual; and that continued till Henry the second, or about king John.
- III. Of the time since about king John or Henry the second. Of the indicavit, and the writ of right of advowson of tythes. What the law was in an indicavit before that statute of Westm. 2. A touch of antient prohibitions, de non decimando.
- IV. Writs of Scire facias for tythes. Inquests taken upon commission to enquire of the right of tythes.
- V. Fines levied of tythes (in the time of Richard the first, of king John, and Henry the third) upon writs of right of advowson.
- VI. Scire facias by the patentees against the pignor of tythes granted by the king.
- VII. Command of payment by the king's writ. And of tythes in forests. Trial of the right of tythes incident in some issues.

AS a corollary to the former parts that directly concern the payment or consecration of tythes, we thought fit to add here in the conclusion of the treatise, the history also (but only the history) of the jurisdiction of tythes in this kingdom. It is clear by the practised common law, both of this day as also of the antientest times that we have in our year books, that regularly the jurisdiction of spiritual tythes (that is, of the direct and original question of their right) belongs, I think, as in all other states of christendom, properly to the ecclesiastical court; and the later statutes that have given remedy for tythes infodated from the crown after the dissolution, leave also the antient right of jurisdiction of tythes to the ecclesiastical courts. But how the difference of ages hath herein been amongst us, is little enough known even to them which fee more than vulgarly. In declaration thereof, we shall aptly divide the time tripartitely; into that of the Saxons; that from the Normans till about Henry the second; and what intercedes from thence till this day.

I. IN the Saxon times a jurisdiction of ecclesiastick causes (among which you may reckon that of tythes, although not much sign of it, in exacting payment of them, appears in the monuments of that age) was exercised jointly by the bishop of the diocese, and by the sheriff or alderman of the *sciregemot*, or hundred, or county court, where they both sat, the one to give gober right, the other for *ripulber* right, that is, the one to judge according to the laws of the kingdom, the other to direct according to divinity. And in the laws made for tythes by king Edgar and king Knout, you see, upon default of payment, it is ordained, that the bishop and the king's bailiff, or sheriff, with the

bailiff of the lord of the land, should see that just restitution should be made. Particulars of the exercise of this kind of jurisdiction, I have not seen; but at the Norman conquest, this kind of holding ecclesiastick pleas in the hundred, or county court, was taken away. Remember that, as at this day, most of the pleas ecclesiastick are in the ordinary's court within the diocese, so most suits in the secular or common law were viscontiel, and held in the county or hundred court of the sheriff in those antienter times, which may best be observed out of one of the books of *Ely*, the most special monument that is extant, for the holding of pleas in the Saxon times. That alteration at the Norman conquest, was by a law made by the conqueror, and directed to all tenants in the diocese of Remy, that was first bishop of Lincoln, whither his see was then translated from Dorchester. And although it be sent in the direction by name to them only, yet, it seems, it grew afterward to be a general law; no otherwise than the statute of *circumspelle agatis*, that hath special reference only to the bishop of Norwich. The words of it, as they are recorded, are; *Sciatis vos omnes & caeteri mei fideles, qui in Anglia manent, quod episcopales leges, quae non bene secundum sanctorum canonum praecepta, usque ad mea tempora in regno Anglorum fuerunt, communi consilio archiepiscoporum meorum, & caeterorum episcoporum & abbatum, & omnium principum regni mei emendandas judicavi. Propterea mando, & regia autoritate praecipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundred placita teneant, nec causam quae ad regimen animarum pertinet, ad iudicium secularium hominum adducant; Sed quicunque secundum episcopales leges, de quacunque causa, vel culpa interpellatus fuerit, ad locum quem ad hoc episcopus elegerit & nominaverit, veniat, ibique de causa sua respondeat, & non secundum hundred, sed secundum canones & episcopales leges rectum Deo, & episcopo suo faciat.* Which I the rather transcribe here, because also it seems to give the original of the bishops consistory, as it fits with us, divided from the hundred or county court, wherewith, in the Saxon time, it was joined. And in the same law of his, is further added, *Hoc etiam defendo ut nullus laicus homo de legibus, quae ad episcopum pertinent, se intromittat &c.*

II. Afterward, under the succeeding princes, till about Henry the second, it seems, that the jurisdiction of tythes was exercised in both courts, as well secular as spiritual, and that by original suit; not only in the one by the first instance, (as regularly the later common law would have it) and in the other by prohibition only. I know, little proof will serve most men to justify, that the spiritual court had then a jurisdiction of them: but also some testimony I have seen of a particular recovery of tythes in the bishop's court in that age. The monks of Northampton,

* Videbis leg. Ebsteltani apud Fox, in eccles. hist. lib. 3. pag. 135. col. 1. Hinc debent episcopi &c.

† In rot. infes. chart. 2. Rich. II. pro dec. & cap. Lincoln. membran. 12. Idem est quod habetur Anglice apud Foxum hult. eccles. Anglic. lib. 4. pag. 144. col. 2.

under ^a king Stephen, recovered two parts of the tythes of the demesnes of *Wullaveston* against *Anselm de Cobis*, before *Robert* bishop of *Lincoln*, as ordinary. In *plenaria synodo coram Roberto Lincolnensi episcopo distrinnaverunt*, as the words are in a sealed charter of *Simon* the second, earl of *Northampton*, then living; wherein he testifies both the recovery, as also *Anselm's* confirmation of the same two parts, according to the recovery, and adds also of his own, *volo & praecepto ut illam elemosynam habeant & teneant liberam & quietam*. And to this you may add, the appeals to *Rome* from the audience of the archbishop of *Canterbury*, and other ecclesiastick cognizance touching ^a tythes, that are (as the antientest precedents of any such ecclesiastick proceeding in *England*) remaining among the epistles of *John of Salisbury*, a great favourite of *Thomas Becket* archbishop of *Canterbury*, in the beginning of *Henry* the second. In one of them it is observable by the way, that one *Richard*, the tenant of land lying within the parish of *Lenham*, being sued in the audience by *Andrew* the rector for his tythes, alleges in court, *sibi a nobili viro Wilhelmo fratre regis, domino suo, esse prohibitum, ne, eo absente, super decimis de quibus agebatur, causam ingrederetur*. Yet the court ceased not therefore to proceed; but sentence being ready to be given for the rector, the cause was sent to *Rome*, upon the defendant's appeal. And although the title ^a were only upon the grant of him that arbitrarily consecrated, yet was it some time determined in the spiritual court. But also that in this elder age, before about the time of *Henry* the second, the king's secular courts of justice originally held plea of the right of tythes, is as plain by infallible proof of antient monuments. To begin with the eldest times of this part of our division; There remains yet recorded a plea held *apud Fulcardi montem*, under *William* the second, between the monks of *Salnour* and *Philip de Braiosa*; wherein the monks claiming against him and the abbey of *Fischamp* (in *Normandy*) *parochiam quae ad sanctum Cuthmannum pertinet de castello de Staninges* (these are in *England*, I think, in *Suffex*) *de Bedingas, & de Bedclingtona*; by the testimony of *Robert* earl of *Mellent*, a judgment of the Conqueror's time is cited, by which the abbey of *Fischamp* had the parish of *S. Cuthmann* adjudged to it in the king's court. And thereupon, it being denied by none, it was now again adjudged, that the monks of *Salnour* should restore whatsoever they had taken, *post mortem regis in decimis & sepulturis & offrendis &c.* to the church of *Fischamp*. And while some delay was in the execution, the king sent his writ *ad iusticiarios suos de Anglia*, that is, to *Ralf* bishop of *Chichester*, *Randal* his chaplain, *Hamon* his sewer, and *Orso de Abetot*, whereby he commanded, *ut facerent ecclesiam S. Trinitatis* (that is, of *Fischamp*) *habere totam parochiam S. Cuthmanni, & decimas & cor-*

pora & omnes custumas tam de vivis quam de mortuis, sicut pertinebant ad praedictam ecclesiam S. Cuthmanni, antequam Wilhelmus de Braiosa haberet castellum de Bembra (*Bramber* castle, in *Suffex*, given by *William* the first to *William de Braiosa*) *& quicquid de supra dictis custumis monachi de Salnour cepervint reddi*. The right of tythes and offerings appears here plainly to have been determined in the temporal court by two judgments, the one under the conqueror, the other under his son *William*. And it is found upon record, that about ^b to *Hen. I.* a writ was sent to *Manasses Arscie*, out of whose lands, divers tythes were conveyed into the monastery of *Fischamp*, commanding him, *Quatenus decimas a parentibus suis inviolabili jure concessas & datas Filicamensi ecclesiae, monachos suos apud Coges degentes omnes in pace & quiete habere faciat; si non, iustitiae regis facerent*. Whereupon he sends his precept to all his tenants of such lands, commanding them to make payment. *Si quis autem aliter factu hic facere praesumpserit, regis irae & nostrae poenae sine dubio patietur*. So among the liberties of saint *John of Beverley*, this writ is found of *Henry* the first. *Henricus rex Anglorum, Osberto vicecomiti de Eboraco & Gerardo de Bridkfla salutem. Praecipio vobis, ut faciatis habere ecclesiae sancti Johannis de Beverlaco, decimas suas, sicut unquam melius habuit, in tempore regis Edwardi & patris mei, de illis videlicet terris omnibus de quibus homines comitatus Eboraci testimonium portabant quod eas habere debent. Et quicunque detulerit, sciatis quod ego volo ut rectum faciat Deus & S. Johanni & mihi. T. Ran. cancellario, & comite de Mellet, apud Londoniam, &c.* What is this else than a kind of *justiciary* to the sheriff of *Yorkshire*, for the right of tythes determinable by the country? Doth not *homines comitatus Eboraci* denote as much? Of the same time also, in a ^d volume of constitutions and other things belonging to the church of *York*: *Henricus rex Anglorum, Osberto vicecomiti de Eboraco salutem. Mando tibi & praecepto ut archiepiscopum Girardum permittas & facias honorifice tenere ecclesias memorum priorum maneriorum, quas S. Petro & eidem dedi, cum omnibus capellis suis, & cum omnibus decimis suis, & cum omnibus terris suis, videlicet ecclesiam de Bokelinton, & de Driffeld, & de Killum, & de Pickering, & de Burgo. Waltero & Eurenaro ninijsris de Driffeld praecepto ut decimas de hoc praeterito Augusto, quas non reddiderunt, plenarie reddant, sicut ecclesia eas julle habere debet, & sicut unquam eas melius habuit tempore patris mei jure meo, antequam eas dedissem S. Petro, & videant ne amplius inde clamorem audiam. Si quis inde injuriam fecerit archiepiscopo, tibi, Osberte, vicecomes, praecepto, ut plenariam restitutionem inde facias. Teste Rogero episcopo Sarisburiensi apud Westmonasterium in natali Domini.* And another is there, in these words: *Henricus rex*

^a Charta Simonis comitis North in thesaur. Cotton.
^b Append. ad concil. Lateran. part. 4^a, cap. 4.
^c cap. 6. & 17.

^d Ms. in biblioth. Cotton 2na

^a J. Sarracul. epist. 21. 74. 92. 109. & 112.

^b Chart. antiq. EE. 1. in arch. Londou.

^c In bibl. autoric.

^d Idem. epist. 109.

^e Chart. antiq. lib. 2. 7. vide supra.

Anglorum Anſch. *vicecomiti & omnibus præpoſitis & miniſtris ſuis* de Driffield, & de Pocklington, & de Killum, & de Piking, & de Burt, ſalutem. *Volo & præcipio quod faciatis habere Hugoni decano & clericis ſuis bene & plenarie, omnes reſſas decimas de dominiis meis in omnibus rebus per hæc prædicta maneria mea, & de omnibus parochianis, qui ad eccleſias horum prædictorum maneriorum meorum pertinent. Similiter facite ei habere bene & plenarie & decimas & omnia jura prædictarum eccleſiarum in terris & capellis. Quia pro ſalute animæ meæ & omnium antecęſſorum meorum beato Petro eas conceſſi in elemoſynam. Nolo autem quod pro recti penuria quicquam perdat quod juſte habere debet. T. apud Eborum.* And about 6 Hen. II. when Turſtin Fitz-Simon uſurped the tythes of Mercham, belonging to the abbey of Abingdon, one of the monks was ſent over to the king into France, *ut per ejus juſtitiam & auctoritatem, as my* ^c author ſays, *reſtium ſuum eccleſiæ ſuæ reſtitueretur. Quod & ita factum eſt. Rediens enim frater qui miſſus fuerat, breve a rege tranſmiſſum in hæc verba reportavit.* Then the writ follows, directed from Tours to the ſheriff of Berkhſhire. *Henricus rex Angliæ & dux Normanniæ & Aquitaniæ & comes Andegaviæ, vicecomiti ſuo & miniſtris ſuis de Bercheſtra ſalutem. Si eccleſia de Abbendonæ habuit decimam de Mcrcham ad luminare eccleſiæ tempore Henrici regis avi mei & anno & die quo fuit mortuus & vivus & poſt, & inde ſit diſſeiſta injuſte & ſine judicio, tunc præcipio quod ſine dilatione inde eam reſaiſtatis; & ita bene & in pace & libere & juſte tenere faciatis, ſicut melius & liberius tenuit tempore Henrici regis avi mei. Et præcipio quod quando Turſtinus filius Simonis redierit in Angliam, quod abbas Abbendoniac plenum reſtium habeat de terra quam prædictus Turſtinus filius S. tenet de ſeudo abbatiae. Et ſi abbas poterit diſſrationare quod non deſecerit de recto prædicto T. in curia ſua, abbas inde ei in curia ſua reſtium teneat. T. magiſtro Joanne de Oxenford apud Turonem.* The ſheriff, by virtue of this writ, upon inquiry of the point of it in his county court, reſtored the abbey to the poſſeſſion of thoſe tythes. The words of the book are; *Cum vero perfectum eſſet regis breve in pleno comitatu, & manifeſte compertum totius comitatus teſtimonio; quoniam præſata decima ad luminare altaris S. Mariæ pertineret, & quod eam Turſtinus injuſte tenebat, vicecomes ex parte regis illum diſſaiſtavit, & eam altari cui adjectæ reſtituit.* What can be plainer, than that in thoſe times (if theſe examples have credit, as indeed they cannot juſtly be impeached) the temporal courts held jurisdiction of tythes in point of right; and not only the ſpiritual; and to confirm it, we add alſo the authority of John of Salisbury, ^e that then lived. He, in an epiſtle to the biſhop of Exeter, relating ſome of thoſe poſitions of the common laws, or the *aviræ conſuetudines*

(as they called them) which Thomas archbiſhop of Canterbury, about 12 of Hen. II. ſo much withſtood, mentions one to be, *quod laici, ſive rex, ſive alius, cauſas de eccleſiis & decimis traſſent*, which well agrees with the authorities before cited. But this was utterly diſallowed then by the pontifical laws, as, beſide the authority of the common canons, may be ſeen in an epiſtle of Alexander III. to the ^h biſhop of Exeter, and the dean of Chicheſter, wherein it appears, that one William a clerk of Chicheſter, had appealed to the pope about tythes, the ſuit being betwixt him and the parſon of Curker; and the parſon had on the other ſide, appealed *ad audientiam domini regis*; whereupon ſays the pope, *quoniam memini licet ſuper rebus ſpiritualibus ad ſecularem judicium appellare, they ſhould inquire of the matter, deprive the parſon, and ſend him to Rome.*

III. The frequency of ſuch original ſuits for tythes, in the temporal courts (through the canons and the power of the pope increaſing, and growing more dreadful to Henry II. and king John) became about their times to be, it ſeems, more out of uſe, and poſſeſſed rather by eccleſiaſtick juſtification. Nevertheless in the ſundry ages ſince, the determination of the right and payment of tythes hath been ſubjeſt to the temporal courts, by divers kinds of original proceeding, which for order's ſake, may be all comprehended in theſe five. 1. By prohibitions touching the *modus* or cuſtoms of tything, or other matter concerning the king's ¹ right, triable only in his own court, or the like. 2. By the writ of right of advowſon of tythes, whereto you muſt annex the writ of *indicavit*, that is but a ſpecial prohibition making way for the writ of right of advowſon. 3. By *ſcire facias*. 4. By bare proceſs of command of payment. 5. By the actions upon the late ſtatutes of 32 Hen. VIII. and 2 Ed. VI. For the firſt and laſt of theſe; becauſe they are now both in common practice, and thence known enough in general to every man, I abſtain purpoſely to ſpeak more of them; ſaving only that for the firſt; out of the more antient ages, I obſerve ſomewhat by the way, which may belong to the uſe of the preſent. In 21 Hen. III. when all the clergy of England, in the national ſynod held at London, under Orto the pope's legate, made ſupplication to have redreſs from the king, of ſome grievances, ^k one was; *Quod judices ſeculares non decendant cauſas eccleſiaſticas in foro ſeculari, &c. & utrum dandæ ſint decimæ de lapicidinis, vel ſylvicidis, vel herbagiis, vel paſturis, vel de aliis decimis non conſuetis*; Which ſhews, that the temporal courts alſo in thoſe elder times, determined what was tytheable or nor, and ſo made prohibitions *de non decimando*, according to the proceſſes in France upon their Philipine, and in Spain upon the Caroline, and according to that note in the ^l register, and ^m Fitzherbert, touching the juſtices determination of what is tytheable. Agreeing to this, is a caſe of

^a Codicis Abindonenſis ms. bibl. Cotton. cap. 26.
^b Vide Fiſch. nat. br. fol. 42. n.
^c Fol. 54. b.

^d L. quod.

^e Epiſt. 1. ep.

^f App. ad concil. Lateran. part. 10.

^g Annal. Burton. monaſt. in bibl. v. cl. Tho. Allen Oxon. ſub ann. 1337.

8 Hen. III.^a wherein a prohibition was granted against a parson that sued for the tythes of rent. But you shall have it as it is in the record. *Warwick. Magister Eustachius de Cestreton attachiatus fuit ad respondendum Hugoni de Lege, quare contra prohibitionem, &c. trahit eum in placitum in curiam christianitatis de laico feodo ipsius Hugonis in Cestreton; unde idem Hugo queritur quod ipse exigit ab eo in curia christianitatis de certa pecunia pro decimis molendinorum, & certum pratum, scilicet tres acras prati, & praeterea de warreto suo; & de terris inculitis si illas locaverit ipse petit decimum denarium, &c. Et magister Eustachius venit & defendit contra eum & contra sectam suam, quod nunquam traxit eum in placitum de aliqua re certa, nisi tantum de decimis feni & molendinorum, sicut decimae inde dari debent, nec aliquam acram prati petit, nec denarios de molendinis, nec aliquid de warreto vel terra nisi tantum garbas; & ideo praeceptum est eidem Eustachio, quod de nullo placito de caetero sequatur in curia christianitatis, nec de aliquo laico feodo, nec de aliquo quod sit contra coronam domini regis.* But, to leave this, and to go to the 2d and 3d and 4th courses of proceeding for tythes in temporal courts, which are not so obviously known; For the 2d touching the writ of right of advowson of tythes, and the *indicavit*; It hath been clear ever since the statute of *Westminster 2 cap. 5.* and of *circumspecte agatis*, both made in 13 Ed. 1. (this as well as the other long since being received into practice by the name of a statute, and so called in acts of parliament; although it were antiently reputed rather as an ordinance made by the king and prelates) that if *A.* parson of *Sale*, for example sake, libel against *B.* parson of *Dale* in the spiritual court, for so much tythes and offerings, possessed by *B.* as amount to the fourth or a greater part of the value of the church of *Dale*, *B.* may have him prohibited by an *indicavit* directed to him and the spiritual judge, after which the patron of *A.* hath no other remedy for himself or his incumbent, what right soever they have, than to bring a writ of right in the common pleas, of the advowson of that fourth part, against the patron of *B.* in which writ, the right of those tythes must be tried by the common law. And herewith expressly agrees the statute of *articuli cleri*. And the reason is, because that if the determination of this plea should be allowed to the spiritual court, then might the patron's advowson of such a part be there lost by judgment according to the canons, whereas the right of advowson and patronage of churches, or tythes, only belongs, by our antient laws and at this day, to the secular court. Neither is the writ so much of the tythes as of the advowson of the tythes; *Præcipe A.* (so are the words) *quod reddat B. advocacionem decimarum ter-*

tiae vel quartae partis ecclesiae de C. &c. And however by the canon law the right of tythes be merely spiritual, and so not due to the rector so much by reason of his presentation from the patron, as of the common right challenged by the ministry (wherupon also *Lindwood*, like a canonist, thinks it not prejudicial to the patron, which way soever the tythes alone be determined of, in regard that all the patron's interest is, he says, originally in the foundation, building, or endowing of the church with manse, glebe, or rent, and hath no relation to the tythes, which by common right are received without his dotation) yet by reason it seems both of our antient practised law of dotation of churches by arbitrary conveyances of tythes, at the owner's pleasure, in which doubtless, patrons very frequently increased the revenues of foundations with the tythes of their demesnes; as also of that other antient use of investiture, wherein the very interest of all the glebe, tythes annexed, and other revenues, was transferred into the incumbent by the patron; it was thought fit that the advowson of the tythes alone should be equally reputed, for what concerned the patron, with any other part of the churches revenue. And the law hath been clear thus, and so still practised since the statutes before cited; they permit not the spiritual court to hold plea of tythes of the value of the fourth part, where the patronage is questionable; but will have the advowson thereof tried always by the common law after the prohibition of *indicavit*, which (being purchased as well at the suit of the patron as of the parson) recites that the parson, defendant in the spiritual court, *tenet mediocritatem* or *quartam partem omnium decimarum provenientium de, &c. de advocacione* of the patron, &c. And then, *quia manifestum est quod praedictus the patron jacturam advocacionis decimarum praedictarum incurreret si praedictus rector in causa illa, that is, the parson plaintiff, obtineret, vobis prohibemus ne placitum illud teneatis in curia christianitatis, donec discussum fuerit ad quem illorum pertineat earundem decimarum advocatio.* And then according as the right shall afterward be tried in the writ of right, the spiritual judge is to give sentence. The same statutes allow, to the spiritual jurisdiction, cognizance of a fifth, and of all parts less than a fourth, of the value of the church in tythes controverted betwix two parsons. And no *indicavit* is grantable to forbid the suit of one of them, commenced for any less part, in respect of the patron's right only. Neither upon them, by consequence, hath any writ of right of any part of tythes that appears not to be a fourth part of the churches value, been allowable. But, for this point; how the law was before those statutes of 13 Ed. 1. is a great question in our year books, and divers are the opinions

touching

^a Placit. & inquisit. 8 Hen. III. in arce London.
& rot. part. 25 Ed. III. artic. 63.

desis Marth. Paris, pag. 716. lin. 40.

^b 7 Ed. III. fol. 47. b. 8 Ed. III. fol. 50. a. regis. orig. fol. 29. b. 38 Ed. III. fol. 13. a. 16 Ed. III. tit. Quare impedit 147. 38 Hen. VI. fol. 50. a. Fitzh. N. B. fol. 30. e. Seingerman. fol. 101.

^c Hen. VI. fol. 14. b. & Brad. lib. 5. tract. de exceptionibus cap. 4. fol. 403. a. & vide Fitzh. nat. br. fol. 47. d.

^d Artic. cleri. cap. 2.

^e 18 Ed. II. tit. brief. 235. & regis. orig. fol. 29. b. Vide Fitzh. nat. br. 47. d.

^f 19 Ed. III. tit. jurisdiction. 28. & Ser Cofin's epistoly part. 1. pag. 57. &c.

^g Constat. provin. cit. de foro competent. c. circumspecte verb. quarta pars.

^h Vi-

ⁱ 31 Hen. VI. fol. 13.

^j Westm. 2. cap. 5.

touching it. Some ⁷ think that before the statute of *West. 2. cap. 5.* (out of which, joined with *circumspecte agatis*, they limit the *indicavit* to the fourth part) no writ of right of advowson of any tythes lay by the common law. Others guess that before that time, a prohibition or *indicavit* lay upon every suit in the spiritual court ² for tythes, and that the patron might have had his writ of ² right upon such prohibition against the suit of his incumbent, either of a fifth or sixth part, and that these statutes restrained him to the value of the fourth part at least. Others have herein other fancies. But, it is plain first, that long before those statutes, tythes were demandable, of the owner detaining them, of their own nature, and pleadable, in the spiritual court. And that affirmed in *Fleta*, was regularly before true. *Decimae* ^b in quantum decimas, in suits against the parishioners, debent in foro ecclesiastico intentari; wherewith *Bracton*,^c living in the time of Henry III. also agrees. But it is as plain, that before those statutes, if the rectors of two churches of several avowries, had controverted the right or more of a fourth part, or of the value of either of their churches, in tythes, by suit commenced in the spiritual court, the patron of the rector defendant might have had an *indicavit*, to prohibit the prosecution and holding of the plea. *Bracton* teaches us that; and hath the form of the writ to the same purpose, and gives his reason, *quia posset patronus jacturam suae advocacionis incurrere*. But somewhat doubtfully he limits the quantity of the tythes to the sixth part at the least, beyond which denomination, the *indicavit*, he thinks, lay not for any part. His words are; *Si contentio fuerit inter rectores de aliquibus decimis quae aestimari possunt usque ad quartam, quintam, vel sextam partem advocacionis, ultra quam partem non extenditur prohibitio ut videtur, tunc fiat iudicibus (ecclesiasticis) prohibitio in hac forma. Rex talibus iudicibus salutem. Indicavit mihi &c.* But he mentions no writ of right of advowson of tythes that should follow. He says indeed, that upon the *indicavit*, by consent only of the patrons, there may be an inquest taken (the jury being returned into court by *venire facias*, or *distringas*, had by petition of them so consenting) *tantum de advocacione*, to find *utrum talis praesentatus a tali patrono recenter fuerit in seiscina de talibus decimis, tanquam spectantibus ad ecclesiam suam, quam tenet de praesentatione talis patroni sui, vel si talis alia persona inde fuit in seiscina tali tenente, ut de decimis spectantibus ad ecclesiam suam talem, quam tenet de advocacione talis patroni sui*. But however *Bracton*'s own opinion, yet doubtfully, be, that the *indicavit* might be brought for the sixth part, and for no less, yet, it seems, the practice of the age was otherwise; and that no determination was in his time, nor before 13 *Edw. I.* of any certainty therein; Which is expressly delivered in the

grievances comprehended in the national^d council of London in 21 Hen. III. where all the clergy intreated *Orto* the pope's legate, that he would persuade the king to alter and correct certain proceedings, *quae fuerunt in regno Angliae in praedictum libertatis ecclesiasticae*; Among which, one is, *Item ne currat prohibitio* (you must understand the *indicavit*) *ne iudices ecclesiastici cognoscant de jure patronatus, quominus clerici possunt petere decimas, tanquam de jure communi, ad ecclesias suas pertinentes. Quia patroni ecclesiarum vel capellarum, quae decimas petitas possident, dicunt per talem petitionem jure patronatus sui derogari, & nolunt iusticiarii domini regis judicare quota pars decimarum peti possit vel debeat coram iudice ecclesiastico*. And another, *Item ne currat prohibitio domini regis, ne rector parochialis ecclesiae impetret eos qui percipiunt decimas infra limites parochiae suae*. By both which, compared with the ancient books, it appears, that the king's prohibition lay commonly, if the advowson of the tythes were between two persons questioned, and that also (for ought occurs to the contrary, except *Bracton*'s conjecture) if any part of the tythes or the advowson, which in such a suit were reputed as one, had been controverted. To these testimonies, may be added this, in the epistles of the most learned^e *Robert Grosseteste* bishop of Lincoln under Henry III. whereby the course of *indicavit* is proved, and also taxed for injustice against the liberty of the church. Thus it is spoken of among other grievances of the clergy. *Item in ecclesiis libertatis non mediocriter delinquitur, cum iudices ecclesiastici, ne causas, quas notum est pure esse ecclesiasticas, in foro discendant ecclesiastico, a domino rege prohibentur. Ut per literas regias inhibetur, ne iudex ecclesiasticus iudicialiter cognoscat, utrum ecclesia vel capella talis loci sit capella matricis ecclesiae alicujus alterius loci, & utrum decimae talis terrae ad hanc vel ad illam pertineant ecclesiam, eo quod si actor in hujusmodi causa evincat possessionem ecclesiae rei, contingeret imminui ac per consequens, ut aiunt, jus patronatus ejusdem ecclesiae deteriorari, ecclesia, ad quam patronus praesentabat, effecta minus pingui. Accideret namque ratione consimili, omnem causam super possessionem, vel quasi possessionem ecclesiasticam, inter duos rectores duarum ecclesiarum diversorum patronatum emergentem, ne ventilaretur coram iudicibus ecclesiasticis a domino rege debere prohiberi; eo quod actor in hujusmodi causa evincens, contingeret semper ecclesiam rei imminui, ac per hoc, secundum quod dicunt, patronatum ejusdem deteriorari. Consequatur autem & sic quod hujusmodi causae ecclesiasticae nunquam discendantur. A seculari enim iudice discendi non poterunt, neque ab ecclesiastico iudice, obstant regia prohibitionem. Forte autem nec consequitur quod in hujusmodi casu, evincens actor, imminuetur patronatus alte-*

⁷ Moles 38 Hen. VI. 20. Forcett. 31 Hen. VI. 14. a. Seingerm. fol. 108. & voyes 38 Ed. III. 19. a. 16 Ed. III. tit. Quare impedit.
² Markham 31 Hen. VI. fol. 30. a. & Parn. 4 Ed. III. fol. 27. b.
^b Fleta lib. 6. cap. 37.
^c Annal. Burton. in biblioth. v. c. Thomas Allen, Oxon.
^d Cotton.

^e Regiff. orig. fol. 20. b. Fitzo. a. b. 30. c.
^f Lib. 5. de exceptionibus, cap. a. fol. 401. & cap. 10.
^g In epist. Rob. Linc. msa. in biblioth.

rius ecclesiae. Non enim minus est patronus, qui minoris ecclesiae est patronus, sed nec minus est pater qui minoris hominis est pater. Patronatus enim, seu jus patronatus non intenditur vel remittitur ex majoritate vel minoritate rei cuius est patronatus. Praeterea sed terna, & ea quae contra naturam crescunt in carne hominis, non augent ipsum hominem, & medicinalis abscissio in naturalium huiusmodi excrementorum ipsum hominem non imminuit, sed potius pulcrificat & sanat. Ita iniustae possessiones, & quasi possessiones, ecclesias ipsas non augent sed deturpant, & earum abscissio per iustum iudicium non est ecclesiarum imminutio, sed potius pulcrificatio quaedam & sanatio; unde & patronatus, seu jus patronatus, per huiusmodi abscissionem nullo modo potest imminui vel deteriorari, sed multo amplius emendari. I faithfully relate it, and censure not the arguments. You may do that, reader, while you smile at the magis and minus in it. But alio, although the *indicavit* prohibited the spiritual court, yet it seems the temporal, before the statute of *Westminster* 2. and after the time of *Henry* the second, or thereabouts, held no plea of right of advowson of tythes, except only upon inquest taken by consent of both patrons. Something, as you see, might be tried in it. May we not conclude then, that the same statute, in those words, *habeat patronus rectoris sic impediti breve ad petendum advocacionem decimarum petitarum*, was the first author (at least after the change about the time of *Henry* the second) of the writ of right of advowson of tythes? Which also is well justified by the pleading of the abbot of *Selby's* case, within six years after the statute, wherein the parties (according to the fashion of argument in pleading of that time) agree, ¹ *Quod breve de quarta parte decimarum primo locum habere coepit a tempore statuti regis nunc apud Westmonasterium inde editi &c.* Neither rests any scruple, touching the fourth part, why the prohibition in the *indicavit* and the writ of right, should be of the fourth part only, or of a greater, although the statute of *Westminster* 2. speaks of no certain part. For that of *circumspecte agatis* ordains, That no prohibition or *indicavit* should lie, where the part controverted is less than a fourth, (it being before grantable upon such suit for a sixth part, by *Bracon's* opinion; and it seems indeed, upon suit for any part) and the statute of *West.* 2. gives the writ of right only where the *indicavit* is first sued. And for this matter of *indicavit* (which concerns properly suit between rector and rector, not between the rector and the parishioner) take as a note, by the way, the advice of the bishops among themselves in 41 *Hen.* III. against the temporal courts. In the annals of *Burton* it is extant, and thus speaks. *Concilium archiepiscopi & omnium episcoporum super articulis propositis apud London. Petit persona ecclesiastica decimas coram iudice ecclesiastico. Judicanti & petenti porrigitur regia prohibitio nomine patroni ecclesiae cuius rector convenitur, ne super advocacione seu patronatu eccle-*

siae iudex ille cognoscat; si actor prosequatur & iudicantis officium assumat, utraque attachiatur, & attachiati veniunt. Consilium tale est, quod si iusticiarii causam decimarum sub colore querelae advocacionis ecclesiarum ad se trahere velint, & de non proseguendo ulterius causam decimarum in foro ecclesiastico & iudice sine a parte securitatem exigunt, in nullo eis caveatur. Et si propter hoc areflectant, per loci diocesanum requirantur sine per episcopum proprium. Et si libere non tradantur ecclesiae, competenti monitione praemissa excommunicantur iudicantes & detentores. Et si queratur a iudice quota pars vel quanta petatur, non respondeatur. But this advice of theirs was to little purpose, nor durst they, questionless, have put it in execution. The statutes of *Westminster* 2. and *circumspecte agatis* gave them some remedy; whereof enough already.

IV. OF writs of *scire facias*, granted to call men to answer in the chancery for tythes, sufficient testimony is in the statute made for the clergy in 18 *Ed.* III. chap. 7. *Item que per la ou briefs* (so are the words) *de scire facias eient esse grantez a garnir prelates, religieuxes, & autres clerks a respondre des dñses en nostre chancellerie, & a monstre s'ils eient riens pureux, on sachent riens dire pur quoy tiels dñses a les demandants ne devient estre restituées, & a responder auxibien a nous come a la partie de tiels dñses &c.* By this it appears, that some use was to grant such writs for tythes. Whence also *Fitzherbert* well infers, that the right of tythes was determinable in the king's court. But we have not in our year-books any case of further declaration of that use before the statute. But out of good ground you may conjecture, that in these three special cases, writs of *scire facias* were grantable antiently for tythes, and that in those times, before the statute; either upon the title of the demandant, first found by inquest, to the tythes, or returned by the sheriff; or out of fines, it seems, levied of tythes; or upon parents of tythes legally granted by the king, when, against the grant, any clergyman by the canon law took them from the patentee. Of all these, there is fair proof enough. But the third (it seems) hath principal reference to that statute, as shall anon be shewed. For the course of taking an inquest by commission, which being returned, might be sufficient ground for a *scire facias*; It appears in *esact.* 8 *Ed.* I. numer. 67. that a commission was sent to *Adam* of *Everingham*, steward of the forest of *Shirewood*, to enquire by oath of the foresters and verderors, whether the priors of *Lenton* had used to have all tythes of the king's venison, taken in the county of *Nottingham*, which they claimed *per cartas quorundam praedecessorum &c.* And in the inquisition returned, it is found, that they had used to have it, and that first by the grant of ^h king *John*. And in the same bundle, num. 72. a commission is to *Nicholas* of *Stapleton*, commanding him to enquire, whether the prior of *Wyke* ought to have the

¹ Placit de banco Pasch. 19 *Ed.* I. rot. 45.

² *E. julian.*

³ *Videit* rot. claus. 31 *Hen.* III. membrans. 3.

tythes of all profits of the manor of *Gringley*; *nobis super jure prioris in hac parte & facto contrario* (that is, the subtraction of them by *Henry de Alemannia*, against whom the prior complained) *certiorari volentibus &c.* Whereupon the commissioner returns, that the priory had right by prescription, and that *Henry de Alemannia* had subtracted them. What could be more proper, than to have a *scire facias* upon the inquisition, according to the intent of that preamble of 18 *Ed. III.* in which *scire facias*, the right might be tried between the parties, and so judgment be given? To these may be added, that in *inquis. ad quod damnum* 8 *Ed. II.* num. 79. Where, *per petitionem* ¹ in consilio, the abbess of *Godefflow* hath a writ directed *custodi equitij sui de Woodstock &c.* which relates that, *ex parte dilectae nobis in Christo abbatisae de Godefflow, per petitionem suam coram nobis in consilio nostro exhibitam, nobis est ostensum, quod cum per cartas* ² *progenitorum nostrorum quorundam regum Angliae concessum sit ei, quod ipsam decimam omnem in manerio nostro de Woodstocke, & parco nostro ibidem per annum renovantium percipiat & habeat, praetextu* ³ *cujus the abbess and her predecessors had enjoyed it, and that the bailiff kept from her the tythe of the colts bred in the same park; wherefore it commands him to restore them if they be so due; Which supposes, I think, that he should return an inquest or some discovery of the truth or falshood of the plaintiff's pretence, although indeed this example may serve also for that part of our division of this kind of proceeding which touches patents. But to that writ is annexed the return, that is, the bailiff's acknowledgment in *French* of her right, his name is *William Beaumays*. So in *escaet.* 7 *Ed. III.* num. 83. a commission is sent out to enquire of the right of the tythes of the demesnes of the king's castle of *Tikhull*, which the prior of *S. Oswald* claimed; the inquest was taken of it at *Le saure Oke*, in the confines of *Yorkshire* and *Nottingham*; and in it the particulars of the right are returned. And what should want, that upon such returns, writs of *scire facias* might not have been granted? We omit that before cited out of the parliament rolls of 18 *Ed. I.* And light also to this practice in the temporal courts of that elder time, may be had from other commissions or process in the rolls; As from that ⁴ sent by *Henry III.* into *Ireland*, to the archbishop of *Cashel*, the bishop of *Ferne*, and the bishop of *Lisnore*, commanding them, that, taking with them *Jeffrey de Marisco* then justice, or lord deputy, of *Ireland*, or some other whom he should appoint, they should inquire by the oaths of both lay and clergymen, whether *Bartholomew de Camera* parson of the chapel of *Limerick*, or *William of Caerdiff* treasurer there, had seisin of the tythes, *de piscaria & molendinis* de *Limerick*, *tempore Joannis regis patris nostri ante guerram motam inter ipsum & barones &c.* But it may be also, that these inquests or returns made of the tide to tythes by the sheriff, were only*

in case where the tythes increased out of the king's demesnes, or perhaps immediate tenants. The examples seem not to go further, and in ⁵ 6 *Ed. I.* a petition was exhibited in parliament by one *Piers* a chaplain of the earl of *Salisbury*, against the prior and convent of *Lewes*, for a tythe given him by the prior and convent in the parish of *Weston*, in the diocese of *Ely*, whereof another grant had been afterward made by them to one *Richard de Meuton*; and *Piers* beseeches the king to send his writ to the sheriff of *Cambridge*, to put him in possession; but this answer is indorsed. *Rex non intramittit se de hiis quae taliter spectant ad forum ecclesiasticum; sed prosequatur jus suum versus clericum qui tenet ecclesiam, coram ordinario.* Here was an express exclusion of the temporal jurisdiction in such a case, where an original writ or commission was demanded to settle or inquire of the right of tythes, that touched only common persons. But whenever through such means the title appeared upon record, I understand not why a *scire facias* might not as well be issuable (although I have not met with an express example of that kind) as in the last court, that is, upon the title appearing in patents of the king or his ancestors.

V. FOR that second ground of writs of *scire facias*, which we suppose to be fines, levied of tythes; Why was it not as likely that upon such fines levied, writs of *scire facias* should lie as upon any others of lands or rents? And that fines of the right of tythes were in the king's courts antiently levied, is manifest. Nor as I remember upon writs of covenant, which yet may (for ought I know) at this day be brought, in the temporal court, for spiritual ⁶ tythes, in regard no tythes but damages are only to be recovered; but chiefly in writs of right of advowson. For example, *In fin. Trin. 10 r. Johannis Wilt. apud Windlefore coram ipso rege, Simone de Pateshulle, Jacobo de Poterna, Henrico de Audemero justiciariis & aliis domini regis fidelibus tunc ibidem praesentibus.* Upon a writ of right of advowson brought by *Ascelyn* abbeys of *Wilton*, against *Henry of Abeney*, for the patronage of the chapel of the greater *Wicheford*; the concord is, that the abbeys grants it to him in fee, saving a pension of two shillings yearly to the church of *Neweton*, being a prebend of *Wilton*. *Et pro hac recognitione & quiete clamazione & fine & concordia idem Henricus remisit & quietum clamavit de se, & haeredibus suis praedictae abbatisae & ecclesiae sanctae Edithae virginis in Wilton, & ejusdem loci conventui, all his right in certain lands, & recognovit & concessit omnes decimas de dominico suo in majori Wicheford, esse pertinentes ad praedictam ecclesiam de Neweton, quae est praebenda de Wilton, sicut eas habere solet, excepta decima bladi proveniente ex viginti acris terrae, quas persona praedictae capellae elegerit de dominico ipsius Henrici; quam decimam persona per Henricum praedictum, vel haeredes suos ad*

¹ Videtur rot. par. 2. *Ed. II.* rot. 23.

part. 2. memb. 1.

² In facie. pet. 6 *Ed. I.* in arce London.

³ Vide, si placet, rot. claus. 21 Hen. III. membr. 19.

⁴ 33 *Ed. III.* fol. 2. & regill. orig. fol. 102.

⁵ Pat. 9 Hen. III.

⁶ 33 *Ed. III.* fol. 2. & regill. orig. fol. 102.

praedictam capellam de Wichford praesentata, & admissa per visum personae quae praedictam praebendam de Newton habuit, vel per visum ballivi ejus debet recipere in autumno, sicut ab antiquo recipere consuevit. The record is worthy of special observation. And in the ledger-book of the priory of Merton in Surrey, a fine is of *Pasch. 12 r. Job.* before the king and the same justices, between *William de Cantelupo* defendant, and *Walter* prior of Merton, upon the right of advowson of the church of *Eyton*, wherein it is agreed, that the chaplain of the demandants in *Eyton*, shall not take a *parochianis ejusdem ecclesiae nec in decimis, nec in oblationibus, nec in confessionibus &c.* but leave them all to the parish church of *Eyton*. And in this, we may, as in the other, note the pretended interest of the patron, in disposition of any of the revenues of the church; which antiently claimed, while investitures continued, was not as yet omitted in these legal proceedings or instruments, that is, fines; which are of greatest curiosity. And according hereto is a fine of 7 *Rich. 1.* levied between the prior of *Stanes* and *Alice Hop-ton*, of the advowson of the church of *Chekelegh* in *Staffordshire*, where *Alice*, as patroness, grants to the priory, among other things, *omnes decimas villae de Northmankote in perpetuum quae est de eadem parochia*, that is of *Chekelegh*. And in the^o chartulary of *Gisburne* in a fine of 23 *Hen. III.* between *Peter de Bruis* plaintiff, and *John prior of Gisburne* (in the province of *Tork*) defendant, in *droit d'advowson*, *Peter* grants, *ut jus suum, omnes decimas super scriptas quas &c.* The like also doth he in a fine of 26 *Hen. III.* there transcribed; and in 35 *Hen. III.* also, of which more particular mention is before made.

VI. BUT for writs of *scire facias* brought upon the third ground, that is, in case where the title appears upon record in patents made of the tythes from the king or his predecessors; take this special example of 17 *Ed. III.* A writ was directed to the sheriff of *Essex*, relating that *Maud*, quondam regina Angliae, granted to the dean and canons of the king's free chapel of *S. Martin's* in *London*, the churches of *Wittebam* and *Cherfinges*, cum capellis & decimis &c. and that they were thereof, and of the tythes of *Wittebam* and *Cherfinges*, seized till 16 *Ed. II.* and that since the abbot of *Saint John's* of *Colchester* took from them two parts of the tythes &c.

Et quia nos omnia & singula jura liberae capellae nostrae supradictae manutene volumus & tenemur, & ea quae substracta fuerint sive injuste occupata revocare, tibi praecipimus quod scire facias nunc abbati, quod sit in cancellaria nostra in quindenam S. Johannis Baptista prox. futur. ubicunque tunc fuerit, ad respondendum tam nobis quam praefatis decano & capitulo, de usurpationibus, occupationibus, & detentionibus, & usurum duarum partium decimarum praedictarum, & ad ostendendum si quid pro se habeat, vel

dicere sciat, quare dictae duae partes decimarum earundem eidem decano & capitulo adjudicari non debeant, & ad faciendum & ad recipiendum ulterius quod curia nostra consideravit &c. Teste &c. apud Westmonast. 17 Junii anno regni nostri 17. Per regem & consilium.

This writ was returned with *scire feci* by *H. Gernet* sheriff of *Essex*, and by consent of the parties it is referred to *Michaelmas* term following in *statu quo nunc*. The writ is both in part 1. and 3. of that year, but to that in part 3. which is of *Trinity* term, a plea of the abbot's is annexed in these words.

Et praedictus abbas per atturatum suum dicit, quod praedicti decanus & capitulum per breve suum non supponunt, quod ecclesiae de *Wittebam* & *Cherfinges* sunt de fundatione dictae liberae capellae domini regis, sed quod illas ecclesias tenent de dono *Matildae* quondam reginae Angliae post fundacionem dictae liberae capellae; & dicit, quod tempore doni, praedictae ecclesiae fuerunt in jurisdictione ordinaria, videlicet episcopi *Lond.* & continue post donum bucuque fuerunt, & adhuc sunt, in praesenti in jurisdictione ordinaria. Et dicit, quod praedictae ecclesiae fuerunt visitabiles & visitatae per episcopos *Lond.* in visitationibus suis, a tempore a quo memoria non extat; Et praedicti decanus & capitulum per breve suum petunt decimas, quas supponunt esse parcellam earum ecclesiarum, quae sunt in jurisdictione ordinaria, in forma praedicta, & sic decimae illae sunt mere spiritualia & non placitabilia nisi in curia christianitatis; per quod non intendit quod curia ista in hoc casu cognitionem habere debeat.

Here it appears, that the counsel of the abbot of *Colchester* defendant, supposed that the cognizance of the tythes was spiritual only, unless they were originally part of the king's free chapel. How the case was determined, appears not: But in the next parliament following, was a petition exhibited by the clergy in those words before cited §. IV. complaining of the granting of such writs of *scire facias*; and upon that petition the king answered, *Que tielx breiffs desore navant ne soient grantes, & que les proces pendant sur tielx breiffs soient anestes, & que les parties soient dismisses devant secular judges de tielx manner de ples, save a nous nostre droit tiel come nous & nostre ancestors avoient eue & soloient aver de reson.* I think we need not doubt, but that this very case of the abbot of *Colchester* was no small cause of that petition of the clergy, and you see mention is, in the answer, of some writs hanging, whereof this is most likely to have been one. But however the petition was answered, and although out of this petition and answer that act of 18 *Ed. III.* hath been received among our statutes, and commonly goes for one, yet might it deserve further consideration than I will here seem to take of it. Only I admonish, that within four years after, a *scire facias* was⁴ brought by a patentee of tythes in the forest of *Inglewood*, and that against a prior being pignor of them; and by

⁴ In bibl. Cotton.

⁵ Falsiculi. brev. de 17 Ed. III. part. 1. & 3. in arce London.

⁶ 23 Affil. pl. 71.

judgment the writ was allowed without mention or the least regard had of that act. Why that was so, or what force the act hath, let others examine; I purposely abstain.

VII. BUT for process of bare command of payment of tythes, or the like; When the title was by patent clearly supposed true, the sheriff, or other officer, was sometimes commanded by writ to take order that the demandant might enjoy his tythes. As in *claus. 7 Hen. III. part. 1. membran. 6.* the king directs his writ to Brian de Insula keeper of the forest of Shirewood, telling him, that *pro salute animae domini Joannis regis patris nostri concessimus monachis de Basingwerk, quod percipiant hac vice usque ad festum S. Michaelis anno regni nostri vii. decimas de bladis feminatis in defenso nostro inter Blakebroc & Gloslop, & ideo vobis mandamus quod ipsos monachos hac vice sine impedimento permittatis decimas praedictas percipere. T. &c.* And such more sometimes occur. But this, and the most of that age that are of this matter, indeed appear to have been of tythes in a forest also, as that of 22 Ed. III. is in the book of *assises*, (which happened after the statute of 18 Ed. III.) and you may remember those before cited out of 6 Ed. I. and 18 Ed. I. in chapter XI. §. III. and the example of 8 Ed. II. before remembered touching Woodstock park. So in *rot. claus. 5 Hen. III. part. 2. membr. 14.* the bishop of Salisbury hath his fifty shillings yearly nomine decimae, out of New-forest, (which Henry the second had granted to his church by the name of omnes decimae de Nova Foresta &c.) and other like out of other, paid him by writ to the sheriff; And in *rot. par. 11 Hen. III. memb. 5. part. 1.* Eustace bishop of London hath the tythe of the king's venison, taken in the forest of Essex, (according to king John's grant) by writ directed to the foresters and bailiffs of that county. Neither would they, it seems, in that age permit any suit for the tenths of venison or beasts of the forest in the spiritual court, although those tenths were most commonly settled in one church or another by grant; As may be seen in *Mich. 9 & 10 Hen. III. rot. 15.* where John Fitz-Robert, in an attachment upon a prohibition against Philip of Ardern clerk, in the pleading allows, that for tythe of hay and mills, the prosecution in the spiritual court was lawful: but he further says, that *de decima bestia forestae eum implacitavit contra prohibitionem &c.* And herewith may be considered also the king's command, sent to the constable of Windsor castle, that the church of S. John in Windsor should have decimas gardini regis de Windleshores. But out of

these all (as out of the examples before brought of commissions to be returned) it may perhaps be collected, that only the tythes of the king's lands, or belonging to his churches, were to be ordered or commanded to be paid by these kind of processes. I confess I have not seen enough to persuade me otherwise, for the time after about king John, or his near predecessors. Yet, that as I leave the judgment of all, which historically I relate, to the able reader, so I may not defraud him of what in any kind may give light; here I offer him also this writ of 24 Hen. III. that seems to touch the temporal courts determination of the right of such tythes, as for ought appears, belonged neither to the king's churches, nor were increasing in his demesnes or immediate tenancies. Henricus Dei gratia rex Angliae & vicecomiti Hertford. salutem. Licet alias tibi significaverimus quod non permitteres ecclesiam de Hamehamstede spoliari decimis ad ipsam pertinentibus, & quod ecclesiam ipsam manuteneres, & defenderes in eo statu in quo fuit tempore Sylvij quondam rectoris ejusdem ecclesiae, non tamen fuit intentionis nostrae quod occasione illius praeepti aliqua alia ecclesia decimis suis spoliaretur. Et ideo praecipimus quod occasione illius praeepti nullam violentiam inferas vel inferri permittas monachis S. Albani super decimis spectantibus ad ecclesiam suam de Redburne, quas per xx annos haftenus pacifice possiderunt. T. m. c. apud Westm. 1. die Septembris an. r. n. xxiv. And in like form was a writ sent to the constable of Berkhamsted. But this kind of process, and all other such writs of *seire facias*, either upon commissions returned, fines, or patents, or otherwise, for ought I could yet learn, have long since ceased, by reason especially of that received act of 18 Ed. III. Neither since that one case of 22 Ed. III. as Igels, hath any use been of an original suit for tythes in the temporal courts, saving only upon prohibitions and the statutes of 32 Hen. VIII. & 2 Ed. VI. I say, original suit, for otherwise, the question of the right of tythes, incident in an issue at the king's suit, hath since been triable in the temporal court; and between common persons also; especially if the right of tythes, upon the issue, were but indirectly or inclusively in question. And although it were directly the very issue, yet also it hath sometimes been tried in an action of trespass in the king's bench, as you may see in *Mich. 12 Ed. II. rot. 66.* between Philip de Say parson of Hodenot in Shropshire, and Geoffrey de Wolsele parson of Chedleton, for tythes in Marchumle. But of these things hitherto; and enough.

* Cart. antiq. CC. in dorf. 10. in acce Lond.

* Pat. 16 Hen. III. membr. 7.

* In codice abbat. S. Albani ms.

* Rot. chart. 6. r. Joh. membr. 12. ch. 107.

* 38 Assis. pl. 20.

* In acce Londani.

* Vide 40 Ed. III. fol. 20.

& 22 Ed. IV. fol. 24. a.

A

R E V I E W.

After some few copies, thus half printed and half written, were dispersed; and since the various censure of unequal readers, (some of them cavilling at such passages in it, as the author at first thought, and not without cause, had been enough cleared) this short Review is now added; wherein, beside some other confirming and declaring authorities, by the way also, and opportunely enough, occur some admonitions briefly offered, that may somewhat direct in the use of this historical truth. The printed sheets could not be increased, or altered. Neither was it so fit, after many hands had the whole, that additions inserted, should make any variance from the written part. And plainly, that of the admonitions, for direction in the use, of its own nature rather required a several place, than 'was fit to have been mixed in the body of the history. In the name therefore of goodness and learning, I earnestly beseech every one, that hereafter shall get it either copied or printed, to join also, if he may, this Review with it.

Of the I. chapter.

IN the I. §. touching that of *Abraham's* tythes being of the spoils of war only; I know many think otherwise. And beside the general name of *tythes* of all, reasons are drawn for their side out of those words of the patriarch to the king of *Sodom*; *I will not take of all that is thine, so much as a thread, &c.* I neither profess to dispute it, nor find I any such consequent out of that text. And the ^a answer to the objection is not difficult. But I add here to those testimonies, both of *Jews* and ancient fathers which I have cited (for I was willing to make their testimonies my warrant, not to gloss the text with my own interpretation, or with the fancies of petty names) that *S. Ambrose* and *Eucherius* bishop of *Lyons* call those tythes also, ^b *decimas praeda* & *victoriae*. And in one passage, *Eucherius* having a plain regard to the epistle to the *Hebrews*, which in the vulgar are expressed by *decimas de praecipuis* (for the Greek ^c *δευκάτια* in τῶν ἀρχαίων) says, *de praecipuis praedis Abraham patriarcha decimas legitur obtulisse*, directing himself still in the conceit of the word *all* in *Genesis*, according to that *ἀρχαίων* in the holy epistle, which both in translations enough, and in the *Greek* ^d proverb before remembered, denotes spoils of war. Yet

also the same father soon after calls them *decimas omnis substantiae suae* generally; but plainly shewing in his former words, that he took *omnis substantiae* here for nothing but *victoriae praeda*. Which, it seems, *Philo* the *Jew* also understands, where in his anagogical course of contemplation, he says, that *Abraham* being the tenth degree from *Sem*, ^e *ἡ δὲ δέκατος κατέστη τῶν νῦν ἀντιτύπων*, that is, *consecrated tenths to the almighty, as a thanksgiving for his victory*. And *Primasius*, an old *African* bishop, interprets *de praecipuis*, in the *Latin* text, by *de melioribus spoliis*. But some have cavilled at my relating, according to *S. Jerom*, that were it not for the holy authority of the epistle to the *Hebrews*, it might stand indifferent whether *Abraham* gave tythes of the spoils to *Melchisedech* as to a priest, or *Melchisedech* the tenth of his estate to *Abraham*, as a portion to one of his posterity. If there be a fault in that assertion (I confess I find none) let them be so bold then as to tax those learned fathers for it, *S. Jerom* and ^e *Eucherius*, beside *Freculphus* ^f bishop of *Lisieux*, and other ancient writers, that in the same syllables affirm it with *S. Jerom*, from whom indeed *Eucherius* transcribed the best part of his more notable passages. Some-

^a Vide Fran. Junium in analyt. Genes. cap. 14. epist. ad Hebraeos, cap. 7.

^b Ad eujus interpretationem etiam consule, si placet, Eutharium ad Odyss. 1.

^c Lib. 1. in Genes. cap. 15. & 17.

^d Tom. 1. hist. lib. 1. cap. 41.

^e In lib.

what

what may be here fitly remembered concerning two adjuncts that belong to this story of *Abraham's* sything, that is, who *Melchisedech* was; and where the place of his kingdom, or *Salem*, was. For the first; Such of the fathers ^a as out of the *Hebrew* text had the true notes of supputation of time, take him to be *Sem*, according as the opinion also was generally received among the old ^b *Samaritan Hebrews*, and divers *Jews* ^c also, especially of later ages; However some *Jews* have been long since of another opinion, in their idle and rash fancies, supposing him to be a bastard, which they took to be the cause why his descent is not spoken of with his name. Others of them, with the *Hieracites*, making him ^d more than a man. But also both the *Hierosolymitan Targum*, and that other called *Ben-Uziel's*, expressly tell us, he was *Sem* the son of *Noah*; which some of late time also have in works purposely written to that end, laboured to make manifest. And doubtless, at the time of the victory, *Sem* was the chiefest of the family there, and either a first born also, or else had in him the right of a first born, or priesthood, by translation from his elder brother; which I add, because the ^e rabbins and divers others of the learned will have it, that *Japhet* was the elder brother. But how that stands so well with *Melchisedech* his being *Sem*, if according to that old tradition, both among rabbins and christians, the priesthood were an incident to the first born male? Unless the right of primogeniture were transferred from *Japhet* to *Sem* in *Noah's* blessing, as it was to *Jacob* from *Esau*, and from *Cain*, it seems, to ^f *Abel*; which must be thought on also in the taking their side, who suppose *Abraham* not to be the eldest of *Terah's* sons. For regularly the antients give the priesthood, before the law, to the first born. And whereas *Moses* is said to have ^g sent young men that offered burnt offerings, the *Chaldee* paraphrases have for *עֲבָדֵי אֱלֹהִים* *eth-nairi*, i. e. *young men*; *יְהוֹשֻׁעַ* *jath-boeri*, i. e. *of the first-born*; These *S. Chrysostom* ^h elegantly styles *ιερείς αὐτοχρηστούς*, that is, *priests of themselves*, or, *made without other ordination or suffrages*. To which office also (thus had either by birth, or blessing, that equalled the birth) a kind of imperial and patriarchick dignity was annexed. That precedence of birth given to *Japhet*, is of no late invention; but many hundred years antienter than the *Talmud*, or any work extant of any rabbin. For the *septuagint* expressly ⁱ affirm it, *ὅτι τὸ Σὴμ ἐγεννήθη πρὸ τοῦ Ἰαφὲθ*, that is, *and sons were born to Sem, being father of all the sons of Eber, and brother of Japhet, being the elder*: which in the *Hebrew* is not so plain on either side, for the words being *אָחִי יַפֶּתְךָ בָּגָדוֹל* *achi Japhet bagadol*, by rea-

son of the want of terminations of cases, may be alone as well turned *elder brother* of *Japhet*, as *brother of Japhet being the elder*; which in the last *English* translation is brought nearest to the original, thus: *Unto Shem, &c. the brother of Japhet the elder, even to him were children born*. And beside such interpretation of the context, the chronological part of the holy story affords much to prove, that *Sem* was not the first born in time. For *Noah* was ^k 120 years old, and got *Scm*, *Ham*, and *Japhet*. *Sem* ^l two years after the flood, being *c* years old, got *Arphaxad*, that is, (as is most probable, if not plain) in the *p. c. ii.* year of ^m *Noah*, *Sem's* age was only *c* years. Then at *Sem's* birth, *Noah* was *p. ii.* years old. Whoever therefore was born when he was but *p* years of age, must be *cii* years old, when *Sem* had seen only one *c* years. If any of them were born in *Noah's* *p* years, as the text seems to teach, it must then be one of the other two, and not *Sem*. This argument, used by the *Jews* and others which follow them here, joined with what is in the *septuagint* for *Japhet*, makes so much against *Sem's* being the first born, that however the great *Joseph Scaliger* be ⁿ most confident, that he was first in birth, as his name is expressed in enumeration, and gives his answers to the chronology objected against it; yet you may with more probability take the more common and antient opinion, that makes *Japhet* the elder. Some will have *Ham*. But I leave that matter; supposing clearly that *Sem* being *Melchisedech*, (for that one man should be denoted by several names, is no novelty in scripture) was either the first born or had the right of it transferred into him by special blessing, and so was *ἱερεὺς ἀρχιερεὺς τῷ μυστρί* *Θεῷ*, as *Philo* ^o calls him, that is, *the great high-priest of the greatest God*. For the place of his kingdom, *Salem*; It is taken by ^p *S. Jerom* (as he learned from some *Jews*) and from him by ^q *S. Ambrose*, *Eucherius*, *Primasius*, and others, that this *Salem* is that which seated on this side of *Jordan*, is some *Lxxx.* miles distant from the plain of *Mamre* where *Abraham* lived, and retains its name in the story ^r of *John's* baptism. And they say that the relics of *Melchisedech's* palace were there to be then seen. But the more common opinion of christians in *S. Jerom's* time, was as now also of greatest divines, that *Salem* here and *Jerusalem* were the same. *Salem nostri omnes*, faith he and others of that age that follow him, *arbitratur esse Jerusalem*; but himself was not of that mind, having, as he faith, learned the contrary. But also, with those old christians, *Josephus* and some later ^s *Jews* expressly agree; and a good character of the truth of their opinion is in the holy text. For, there the *king's dale*, whence the king of *Sodom* came out to meet

^a Hieronym. tom. 4. in epist. ad Evagr. & Eucher. loco citato &c.

^b Midras Hagadol apud rab. Jarchi in Genes. 14. & alii ibid. item Midras in psalm. 76. apud Galatin de Arcanis, lib. 1. c. 9. quem & vide lib. 10. cap. 6.

^c D. Ambr. lib. 1. de fide cap. 1. Hieronym. & Epiphani. ubi sup. & haeretic. 67.

^d rabbinorum sententiam notat D. Kimchi in rad. חָיִל ita & Jarchi ad Genes. 10. 21.

^e Vide Philonem *ἡμῶν* *ἐν* *ἱερουργίᾳ* *Ἀβελ* *τῷ* *καὶ* *καὶ*.

^f In Gen. 22. 21. vide fide Eucherium in Genes. lib. 1. c. 24. & 27.

^g Genes. 7. 22.

^h In lib. *ἡμῶν* *Ἀβελ*.

ⁱ Vide Midras Tehillim, apud Galatin de Arcanis, lib. 1. cap. 9.

^k Epiphanius in haeretic. 65.

^l Au tory.

^m Quam & vide lib. 10. cap. 6.

ⁿ Eam esse rabbinorum sententiam notat D. Kimchi in rad. חָיִל ita & Jarchi ad Genes. 10. 21.

^o Exod. cap. 24. comm. 5. & vide Numer. cap. 3. comm. 11.

^p Ibid. Pelusiana lib. 1. epist. 47.

^q In Gen. 22. 21.

^r In lib. *ἡμῶν* *Ἀβελ*.

^s In epist. ad Heb. cap. vii. 2.

^t Johann.

Abraham, in his return is ^d remembered, as if it were close by where *Melchisedech* was. Now it is thought certainly that the place of *Abraham's* pillar, that is, the king's dale spoken of in ^e *Samuel*, is no other then a valley, which being hard by *Jerusalem*, is known to our age from *Abraham's* name; Where yet, they ^f say, he hath a monument, and such as pass by, use to cast stones at it in detestation of his disobedience; And also the very place where *Melchisedech* gave *Abraham* the bread and wine, is, they say, yet known on mount ^g *Calvary*. But hitherto briefly of these two adjuncts of *Abraham's* tything: Neither supposed I, but that many which think of it for argument either way, would desire some satisfaction in them.

Of the II. chapter.

Hitherto could I never see any christian that hath fully taught what was considerable in the general payment of tythes among the *Jews*. The noble and most learned *Jos. Scaliger*, did not every way enough accurately teach it, although in a single treatise he purposely undertook it. How sufficiently among us, others do, that slothfully and ignorantly (without his help) while yet their end is to write of tythes, talk of a *third tythe* here, and a fourth tythe, and indeed they know not what tythe, let him judge that shall hence know their error. This last spring mart in the title page of *Drusus's* observations upon *Joshua*, and some other parts of the old testament, a new discourse, *De decimis Mosaisicis*, written by *Sixtinus ab Amama*, professor of Hebrew in *Franker*, was promised; but I could never yet see any such thing joined with that of *Drusus*, or otherwise published. What we have of them is, as the great doctors of the *Jews* have delivered in the *Talmud*, and their later comments; which are testimonies beyond exception, for the practice or historical part. For that in §. VI. of ἀποδείξτων τὸ δεκάτωον, out of *Epiphanius*; I rather think indeed, that it denotes only a paying of tythe, not a tything of what was already tythed. It is well known that the language of the *Greek* fathers, especially of about his time, is frequently mixed with phrases of the *septuagint*. Now they ^h have ἀποδείξτων τὸ ἐκείνου &c. δεκάτωον, for nothing but to pay a tythe, which agrees somewhat with the *Hebrew* fashion of expression. And as they, so *Epiphanius* without doubt understood it; however some of great names are of another mind. But to what is there touched for the forwardness of payment of first fruits among them, I here add out of ⁱ *Philo* (who lived under the time of the second temple, and spake of his own knowledge) that they were paid in such abundance, οἱ δὲ ἀπορροταίον τὸ ἱερὸν ἕκαστα περιποιῶν τροφῶν ἐννομεν τῶν δεξέων σίτων, that is, that even from the abundance only of first fruits, heavenly offerings, or *therumahs*, which were paid by the

owner immediately to the priests, there was not a priest in the twenty four courses of them (so the priests or posterity of *Eleazar* and *Ithamar* were divided ^k by king *David*) but might be accounted a very rich or largely furnished man. And he tells us further, that the *Jews* were so ready in paying them, that τοὶ ἀποδείξται θυσίας, ποὶ προθεσμίας ἐνθυμνήσεις, λαμβάνουσιν ἀλλ' ὃ δὲ οὐκ αὖτις τοιαύτης μετ' ἐνθυμίας καὶ ἐνχαριστίας καθ' ἑκάστην ἐκτίσιν ὅρων παύσαι τὰς ἐσφορας ἀνδρὶς ἡμῶν καὶ γυναῖκας, αὐτοκελεύσιν προθυμίας καὶ σπουδῇ πάντος λόγου κρείττους, that is, they prevented the officers demanding them, paid them before they were due by law, and as if they had rather taken a benefit then given any, both sexes of their own most forward readiness, in every first fruit season, brought them in with such courtesy and thanksgiving as is beyond all expression. All which is spoken only of first fruits and *therumahs*, not of tythes, as it is falsely in the *Latin* translation; where ἀπαρξίσθαι alone is ignorantly understood for tythes paid by the laity to the priests; the truth being, that the laity paid only first fruits, not tythes, immediately to the priests, but only to the *Levites*, that is, those which were, as *Philo* says, ἐν δευτέρᾳ τάξει, that is, in the second rank, and *ἐκδοτοί*, or as wardens, officers, singers, and other such ministers. And the *Levites* paid the tythe of their tythe to their priests, who so through the *Levites* received tythes out of the possessions of the laity; as also the holy author to the *Hebrews* is interpreted, where he says, That those of the sons of Levi that had received the priesthood, had a commandment to take tythes of the people according to the law. For the posterity of *Aaron* that had the priesthood, received none from the people, but immediately and through the *Levites*. In the same holy epistle, their continuance of payment of tythes (which as long as their priesthood *de facto*, and the political form of government, instituted by the Almighty, continued, was even *ex conscientia* to be performed, as some ^l teach) is also manifested after *Philo's* time. The *Jews* are told in it, that here men that die receive tythes, but there be of whom it is witnessed that he liveth. That here, being plainly referred to the use of the *Jews* (to whom the epistle was sent) under the second temple. So *Primasius*, an old *African* father, interprets it. Hic inquit, saith he, hoc est in praesenti seculo, vel in templo quod adhuc stabat, morientes homines, filii videlicet Levi, qui mortales ac moribundi sunt, decimas accipiunt. But about this time also, it appears in story, that tythes were still paid by the *Levites* to the priests, which supposes the people's payment to the *Levites*. Remember that of *Fl. Josephus* ^m where he tells, that when *Foelix* was lieutenant of *Judea*, such a tumult and sedition happened betwixt the high priests (*ἀρχιερεῖς*) and the rest of the priests, and the chiefest of the laity; that the high priests to satisfy their malice upon the rest of the priests, violently took away the

^d Genes. xiv. 27.

^e 1. chap. 19. & 19.

^f Videlicet Suarez de legibus, lib. 9. cap. 19. §. 16.

^g 1. Sam. xviii. 18.

^h Genes. xxviii. ult. Deut. xvi. 13.

ⁱ Archæolog. lib. 10. cap. 6.

^k Brodenbach. in peregr. 14. Julii.

^l Lib. viii. c. 1. c. 1. c. 1. c. 1.

^m Antiqu. lib. 10. cap. 6.

ⁿ Villamont des voyages

^o 2. Paralip. 14. 4.

tythes that were kept in granges and barns for their maintenance, and in so much wronged them, that some of the poorest of them even died for want. This was about the beginning of Nero; and * *Eusebius* and * *Nicephorus* relating it from *Josephus*, refer it to him; although *Rufinus*, in his translation of *Eusebius*, rather places it under *Claudius*. But under both, *Foelix* was lieutenant. By the way, you may note that in Nero's time, divers of the priests were grown much poorer than they had been lately before, if *Philo* be to be credited, who lived also but little before Nero's empire. It was very hard with some of them, it seems, that the taking away their tythes only should starve them. Those high priests here spoken of, are such as were the chiefs of the xxiv orders; for ^p so also were the priests divided. There was never but one high priest properly, and that according to the first institution. But others that had a supremacy among those orders, were also called so, as both here, and in ^q holy writ: and they were, to the high priest, as the *סוֹפְרָאנוֹת* in the eastern patriarchats, which are as suffragans to exercise the patriarch's office in his absence; or as the bishop-cardinals in Rome. And the first and chiefest of these high priests in the plural number, was as a designed successor to him that properly bare that name, and was his prime vicar, chief suffragan, or the second priest, as *Zephaniah* was to *Seraiah*, and as *Annas* to *Caiphas*. For so the most learned understand that of them two, being high priests together in the gospel. But this by the way. Yet who knows it not, may soon stumble at the story; and, if not admonished, trouble himself with as good a disquisition about it, as that abbot *Paschasius* long since fell into about what follows out of *St. Matthew*, in the seventh section, where the strict payment of tythes used among the Scribes and Pharisees is spoken of. He being too ignorant of the particulars of the Jewish state, doubted much how the Scribes and Pharisees should so pay their tythes, *cum ipsi* (as his words are) *sacerdotes erant & Levitae qui magis accipiebant decimas a populo quam darent*. But I wonder what made him so much as dream so; indeed he answers himself also. But plainly the Scribes and Pharisees, as known by that name only, had no more reference to the tribe of *Levi*, than to any other of the twelve. Children in the holy text, or the Jewish story, know it.

That general rule of their lawyers in the same section, taken out of *rabbi Ben-Maimon*, is first in their ^u *talmud*, where also the *gemara*, that is, the following opinions of their doctors, hath many especial cases of this or that fruit or increase of the earth; but often little to the purpose. One thing their *misnah*, or text, adds further to that rule; that is, whatsoever fruit or herb is fit to be eaten, both while it is young or new, as also when it is at full growth, must pay tythe

as well when it is young, as at full growth: but if while it be young, it be not fit to be eaten, *אֵינָהּ שְׂעוּרָה עַד שֶׁיִּשְׁעָר* that is, it is not subject to tythe until it be come fit to be eaten. That in *sect. VIII.* of them that take the profits of land among the Samaritans, or in *Aram*, that is, Syria, must be understood of a Jew dwelling among them, and tilling the land there. For regularly if the fruits of lands in Syria were taken by a Jew, residing still in own country, he was to pay ^a tythe of them.

Touching their tything after the second temple destroyed; Although for want of a temple and a priesthood at this day, they tythe not legally, yet among their apophorisms both divine and moral, they ^r tell us, that as the *maforesh* is the defence of the law, so *מַגִּישֵׁרוֹת בֵּינָם* *maighsheroth* *seag laighser*, that is, *tythes paid are the defence of riches*. Whereupon one notes, that at this day, *qui religiosiores sunt inter Judaeos, loco decimarum, elemosynam pendunt de omnibus lucris; decem aureos de centum, centum de mille &c.* But however the devouter of them may give such alms, it is plain that their legal tything hath now no place among them, for want of a sufficient priesthood and temple or tabernacle. Yet, without doubt, most of them have long since expected a ^a third temple; otherwise why were they so careful to have their laws and especial cases of fruit tythes and tything, so copiously delivered in five whole *massacheths* of their *talmud*, or body of their civil and canon law, which was, many years after the destruction of the second temple, made for the direction of the dispersed of their nation?

Now, methinks, he that argues for tythes, from the *Mosaic* laws of tything, had need more especially, than any I have yet seen hath near done, examine which of the two kinds are due in the evangelical priesthood. Why not the second as well as the first? And further consider also, how the payment of tythes from the laity to the priests of the gospel, succeeds to the payment from the Levites to the sons of Aaron. But these considerations can only be, where the knowledge of fact precedes. For without exact distinction of their several tythes, any argument drawn from them, may soon be found a gross fallacy, that may both deceive him which makes it, and those whom he teaches. Let the ingenious reader think of it.

But one thing more here by the way. So much either ignorance or neglect in the disquisition of what belongs to the tythes of the Jews, hath possessed some great names, that, touching the proportion of the tythes and the receivers, they have rested fairly satisfied in this; that the Levites being one of the twelve tribes, had the tenths as a competent maintenance to themselves, being near the tenth, that is, being the twelfth part of the people; as if arithmetically the people and the revenues had been so divided. But others have long since easily shewed

* Eccles. hist. lib. 2. cap. 20.

* Lib. 2. eccles. hist. cap. 26.

^p 1. Paralip. xxiv. 4. §.

^q Vide D. Math. xvi. 57.

& 19.

^r Videtur Scalig. in prolegom. ad chronic. Eu ebil.

^s Reg. xxv. 18.

^t Paschas. Rauber. abbas Cor.

benef. in Math. lib. 10. pag. 191.

^u Seder Zeraim massic. maighsh. perek. 1. §. 1.

^v Talmud. d. Seder. mist. domai.

perek. 6. & massic. maighsh. perek. 1. §. 5.

^w Turki Abooth. cap. 5. §. & notae adjectae.

^x Videtur Galatin. de Arcan.

lib. 5. cap. 10.

the slightness and fallhood also of this fancy. And clearly, had such a near proportion of persons and the name of tenth held; yet examine all that was paid to the priests and *Levites* in first fruits and the several predial tenths only, and it will be near a fifth. And we here omit also the cities and suburbs assigned to them, and their other many profits out of sacrifices, ransoms of first-born, and the like. But for that proportion of number betwixt the tribes, we have sufficient testimony in holy * writ, that it was far otherwise. The able men for arms of the eleven tribes were numbered to 603550, and these all of xx years old at least: the males of the *Levites* from a month old were severally found to be but 22273; for so are the particulars of the families of *Gershon*, *Koath*, and *Merari*. Here then the *Levites* reckoned, with advantage of all their male children of above a month old, make not a $\frac{1}{10}$ of the rest of the tribes. Had the rest been accounted also with all their males of like age, it is probable enough that the male *Levites* would not have equalled a fiftieth or sixtieth part. As in the one sex of them, the conjecture may also be in the other. And afterwards likewise ² in *David's* numbering, we see the *Levites* of thirty years old were less than $\frac{1}{10}$ part of the rest of *Israel* and *Juda*, that were able to bear arms. Where then is any thing towards proportion betwixt the number of the priests and *Levites*, and the denomination of the rhythe? Neither is it to any purpose or consequent to look after any such thing. I rest in this; that it pleased the Almighty so to enrich that tribe, which was reserved only for the holy service in the temple. Why he did so, or with what proportion, let them, for me, examine, who dare put their prophane fancies to play with his holy text, and so most impudently and wickedly offer to square the one by the other.

Of the III chapter.

IN it, largely out of original authors of *Greece* and *Rome*, is shewed the use of tything among the *Gentiles*: far more largely than by any that hath yet touched it. The truth also, wherein too many are either obstinately or ignorantly blind, touching that of their supposed general payment, collected out of a corrupted place in *Festus*, or rather in *Paulus Diaconus*, is declared and brought to its own limits. Neither will any judicious reader doubt of the corruption of *Festus* in that place: whosoever knows but the fashion of his writing (which must be observed in that of his own, after the xi book, partly yet remaining in his very words) cannot at all think that, *decima quaque veteres Diis suis offerebant*, should be delivered by him. He is in all other things more curious. He would not have talked of *Diis* generally, or *quaque*. But it was no such wonder that *Paulus Diaconus*,

who ignorantly abridged him under *Charles the great*, should say so; being, as the learned acknowledge him, no small enemy to posterity, in so cutting and maiming him. He was (says the noble ^b Scaliger) *homo meo judicio confidentissimus ac, uti res ipsa docet, ineptissimus*. Had he dealt with *Festus*, as *Festus* did before with *Verrius Flaccus*, it had been tolerable. Though by *Festus* perhaps we have lost much of *Flaccus*, yet he appears judicious enough and careful in what he delivers from him. But this *Paul* (being, I confess, otherwise a man of great reading and knowledge for the time he lived in) hath not only here by conjecture, but in other places most plainly to expressed things of this nature, that is, touching the theology or rites of the *Gentiles*, that, had we not found some pieces of *Festus* himself, posterity might have been perpetually blinded by him. No man will deny it, that observes but his words, *malevoli, nixi Diis, praeclamitatores, navia*, and divers others, which, compared with what is left of *Festus* whence he had them, appear to be either mistaken or falsely delivered. But for the *Gentiles*: It is true, they were very devout in giving of their yearly increase to the honour of their Deities, according as the *Attick* law received, as is thought, from *Triptolemus*, and seconded by ^c *Draco*, commanded, that is, *ὅτις ἀγροῦς ἀγάρθων, that is, to honour the Gods with their fruits*. Witness enough of the *Grecians* is found in their *thalysia*, that was the feast immediately after harvest, wherein they ^d spent much of their fruits in honour of *Ceres*; in their *haloa* about the same time, which was ^e the like devotion to her and to *Bacchus*, and in their several *dionysia*. All which spent no small part of their yearly fruits of wine and corn; that we may omit their other feasts of less note that are to this purpose. And among the *Romans*, was a like forwardness to consecrate part of their corn and wine to the Gods; as we see in their *sacrima*, ^f that is, the first of their must, spent in the honour of *Bacchus*; their *calpar*, or the first and best of their wine, as it was when they first began to draw it, sacred to *Jupiter dapalis*; their *praemessum* or *praemetium* before harvest; their *florifesstium* after harvest, both bestowed in honour of *Ceres*; and the like more to her and to *Jupiter*, *Janus*, and *Bacchus*; that we may omit their *robigalia*, *solitaurilia*, and the rest of such kind. But all these plainly were at the liberty of the owners. And so was it expressly denoted in the ritual words of sacrificing of their new wines: as ^g *masle*, or *mallus* *Jupiter hoc vino inferio esto*, as if they had said, *be honoured Jupiter with this wine, which is as much as I can spare thee*. For so much is in substance denoted by *inferio*, that is, *vino quod inferitur*: and therefore was that word ^h added, because all the rest might be free from religion after these were so severally sacrificed. For until the sacrifice, all the wine remained so sacred

* Numer. cap. i. & ii.

¹ Vide 1 Sam. xxiv. 9. ² Paralipom. xxiii. 1. & 17.

³ Hieronimus apud Porphyrium *ἀπὸ τῶν ἀρχαίων*, lib. 4.

⁴ Theocritus Idyll. 5. & c. ibid. Scholiastes.

⁵ Festus in hunc voc. ad quem vide Jul. Scaliger, & in conjec. ad Varronis de L. L. lib. 5.

^b In epist. nuncupat a J. Monacium.

^c Eustath. ad illud. a.

^d Trebatius apud Arnobium adversus gentes, lib. 7.

^e Cato de re rustica, cap. de 132.

that it might not lawfully be meddled with for common use. But the owner might by such arbitrary giving his *infernum*, discharge it of being any more sacred; and thereupon says *Arnobius*, jelling at their ceremonies, *Mælius hoc vino inferio esto, quid est aliud quam dicere, tantum esto mælius quantum volo; tantum amplificatus quantum jubeo; tantum honoris assumito quantum te habere decerno, & verborum circumscriptione definio? O Deorum sublimitas præpotens, &c. quæ per unius formidinem verbi ab immodicis vini cupiditatibus arcetur!* Among all these feasts, not any mention is of a tenth or any certain part. But the tenth came sometimes, only at the will of him that had good fortune, or, *post rem bene gestam*, as *Servius* his words are. So *Herfennius*, who had been a piper all his youth, and doubting the success of that trade, fell thence to be a merchant, and then, *re bene gesta decimam Herculi dicavit*. That consecrating use to *Hercules*, was most usually made with solemnity at that *ara maxima*, near the *forum boarium*, or the ox-market; upon which, some¹ say, but fabulously enough (as the rest of these particulars are delivered) that *Hercules* himself first spent the tenth of what he took from *Cacus*, in a jolly feast, with *Evander* and the rest that honored him for it. And upon that altar, says *Halicarnassensis*, *δρακατύνους χρημάτων ὑπόκειται κατ' ἑτάρας*, that is, *tythes* are there frequently offered by vow. But the payment of that vow was commonly in feasts made in honour of him; and those feasts were, it seems, in antienter time, until the vow was performed, celebrated within every ten days by such as were so religious to him. And in that division of time, for the more convenience of entertainment, his *tythe* was merrily spent; and the guests always lent home crowned with bays in honour of him. So I understand that of *Varro*² when he tells us, *maiores solitos decimam Herculi votere, nec decem dies intermittere, quin polluerent, ac populum αὐτὸ ἐλαύνον cum corona laurea dimitterent cubitum*. And of this kind of feasts were those dinners of *Orestes*, spoken of in *Cicero*. *Orestis nuper prandia in semitis decumæ nomine magno bonori fuerunt*. It seems, their vow both of gain and of spoils of war, was made to him chiefly as he was their god of war or of defence. For it is clear, not only in the old *Roman* divinity or mythology, that *Hercules* specially was accounted *Mars* (as is plain by their monuments, which shew that the institution of the *sacra salaria* were indifferent to *Hercules* or *Mars*, and made to one deity under those two names) but also by the old astronomy, wherein the planet *Mars* was likewise called³ *Hercules*, and that not only by the *Chaldeans* (as *Macrobius* too rashly affirms) but also by the *Egyptians*, from whom the knowledge of the heavens came out into *Europe*. For howsoever it be noted out of an old glossary, at the end of

that most learned work of the noble *Scaliger* upon *Manilius*, that *Mars* was called among the *Egyptians* *Πυρρῶς* (suppose the northern *Egyptians*, about *Alexandria*, where they spake Greek before the *Roman* empire and afterward) and although⁴ some other old testimony, say they, stiled him⁵ *Ἀρης* (not *Ἄρης*) yet *Achilles Statius*, that was⁶ an *Egyptian*, says expressly, that *Pyrrhis* is the Greek name of *Mars*, and that in *Egypt*, he was called the star of *Hercules*. So the author of that *πρὶς λόγους*, attributed to *Aristotle*; δ *Πυρρῶς* δ' *Ἡρακλῆος* τὸ ἐξ *Ἄρης* προσαγορεύμενος, that is, *Pyrrhis* being called both *Hercules* and *Mars*; which *Apuleius*, because *Hercules* was not so common a name for it, thus turns, *quem multi Herculis, plures Martis stellam vocant*. And his common titles in old inscriptions justify the same. *Inviſto, victori, defensori, pollenti*, and such more are frequently his additions, being proper to *Mars*; and under some such title was he worshipped, almost in every city of⁷ *Italy*. And I would *Varro* had rather here sought the cause of his title of *victor*, than in that ridiculous reason which he brings, *quod omne genus animalium decies vicerit*. Had he said, that therefore also his *tythe* was given him, because of *decies*, he had spoken as probably and as wisely. Indeed it is a wonder to see a man of that abstruse learning and great abilities, that *togatorum doctissimus*, to be so childish as he often is, in unhappily troubling himself about derivations. But of *Hercules*, enough. Beside that of the maritime *Pelagii*, in §. i. the other of them that seated themselves further into the land in *Umbria*, being oppressed with a sterile year, vowed the tenth, *δρακτὰς τῶν προσγεσσωμένων ἀπάρτων*, that is, the *tythe* of all that should increase to them, to *Jupiter*, *Apollo*, and the *Cabiri*; and this they paid also; but they were admonished by *Apollo* his oracle, that their vow was not performed, until they had sacrificed also the *tythe* of their children, which was done also. But now see (when you truly know the antient tything among the *Gentiles*) how well they conclude here, that draw arguments from the general law of nature or nations, as if by that law any such use of payment of *tythes* had been established among them, as was continual or compulsory.

Of the IV. chapter.

THAT which succeeds, is only of *christian* practice, laws, and opinion. Which any man, that sees but the course of our divison, may easily know; though he were as perverse as he was, that to confute me in assertion here, of no proof of payment of *tythes*, till towards the end of the first *eccle years*, confidently brought that text of the holy author to the *Hebrews*, *here men that die, receive tythes*; and was ready to sing, *decidit in caſſes, &c.* as

¹ Ad Aeneid. 8. commate 30.

² De officiis, lib. 2.

³ Plin. hist. lib. 2. cap. 2.

⁴ Venit Valens Antioch. lib. 6. Antholog. mss. sed verba ejus repetuntur in Synagm. 1. de Diis Syris, cap. 6.

⁵ In Arati Phaenomena.

⁶ Myrsilus Lesbicus apud Halicarnass. Popu. archæol. a.

⁷ Cuius historia etiam apud Eusebium in 1. 10. tripartita videtur.

¹ Halicarnass. Popu. archæol. a.

² Venit Valens Antioch. lib. 6. Antholog. mss. sed verba ejus repetuntur in Synagm. 1. de Diis Syris, cap. 6.

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⁵ Cuius historia etiam apud Eusebium in 1. 10. tripartita videtur.

⁶ Ad Ebraeos, cap. 7. 2.

¹ Apud Macrobius Saturnal. lib. 3. cap. 17.

² Antholog. mss. sed verba ejus repetuntur in Synagm. 1. de Diis Syris, cap. 6.

³ Halicarnass. Popu. archæol. a.

⁴ Cuius historia etiam apud Eusebium in 1. 10. tripartita videtur.

⁵ Ad Ebraeos, cap. 7. 2.

if that had proved a payment in the apostles time. Indeed it proves a payment among the *Hebrews* or *Jews* then, and also is seconded by other authority before touched. But any reference there had to a *christian* practice of tything, I suppose no man will affirm that is of a sound brain, and uses holy writ with due reverence. But my application of some passages in *S. Cyprian* in §. 1. here are found fault withal; in that I understand not his mention of the word *decimæ* to be a note of payment of tythes in his age. Indeed I did not think that any man which understood *Cyprian*, with the use of his time in making up the ecclesiastick treasure, would have therein taxed me. Neither have I given his words alone and then my own gloss (as many have done too often, and that in things of the nature of this subject, and so have deceived their credulous readers) but I have carefully and shortly expressed also the occasion of his passages; and so, that an understanding reader may collect as much out of them as he might do, if he had the whole context of *Cyprian* by him. If I have erred in the interpretation, it is but my single error and theirs that dare give authority here to my judgment. Whoever can think otherwise by *Cyprian's* words, if he saw him, may equally do so by my relation. However then, I impose not on any reader. But for that second place of his out of his *De unitate ecclesiæ*, observe his words more fully. Thus they are. *Damos tunc & fundos venundabant, & thesaurus sibi in coelo reponentes, distribuenda in usus indigentium pretia apostolis offerbant. At nunc de patrimonio nec decimas damus; & cum vendere jubet dominus, cimus potius & augemus.* So far is this from denoting any payment of tenths of annual increase, (which is the tythe we inquire after) that indeed no such tenth seems here to be understood in the mention of *decimæ*. He speaks of them which sold their whole estates in the apostles times; but now, saith he, we give not the tenths of our patrimonies, that is we give not the tenth part of what devout christians then did, but instead of selling for devotion, we buy and increase our estates. What other tenth is here spoken of, than the tenth part of every mans patrimony or estate? And what hath that to do with the tenth of annual increase only? And, for any use of payment in this time; I was not so bold to make the negative, that, *no tythes were paid*, but that *it could not be proved that any were*. He that can shew me ought omitted that might prove it, shall deserve and have thanks of me. In the mean time, further to justify what I affirm, take this of *Epiphanius* bishop of *Constance* in *Cyprus*, that about the year CCC.LXXX. wrote against the heresies of the primitive times; when he "tells us of the *Tessaresdecatitæ*, or those which thought the holy *Easter* must be kept on the fourteenth moon, according to the law given to the *Jews* for their passover, and that because they apprehended, that the keeping it

otherwise, was subject to the curse of the law; he says, that *πάντα ἔχουσιν ἐν ἡ ἐκλήσια*, that is, they do all things or agree generally with the church, saving that they were too much herein addicted to the *Jewish* custom. And in his argument against them, he shews, that the curse hath not reference only to the passover, but also to circumcision, to tythes (*ἐπὶ δεκατρίσιν*) to offerings. Wherefore (as he goes on) if they escape one curse, by keeping their *Easter* according to the law of the passover, they thrust themselves into many other. For (saith he) they shall find them also cursed that are not circumcised, and them cursed that pay not tythes, and them cursed that offer not at *Jerusalem*. Let any man now consider if this bishop that was least unacquainted with the customs of the christian church, understood not clearly that no necessary or known use of payment, was among christians in his time, of tythes, no more than of circumcision, or offering at *Jerusalem*. Doth he not plainly reckon it as a thing not only not in christian use, but even equals it with what was certainly abrogated? Is not his objection shortly thus? Why do you not observe circumcision and tything, and offerings also at *Jerusalem*, which are all subject to the like curse? And because some kind of offerings indeed were in use among christians, therefore in the objection he providently ties them to *Jerusalem*. But of tything he speaks as generally as of circumcision. Observe his own context, which I here give, that the able reader's judgment may be free. *Ὡς ἐν ἡ μίαν καταρὰν περιέχουσιν, ἡ πάλαι ἱερὰ; ἡ νῦν. Εὐφρόσινος ἡ γὰρ ἱπποκράτους καὶ ὑποκρίματος, ἱπποκράτους καὶ ἀποκρίματος, & ἱπποκράτους γίνονται καὶ ἐν ἡ ἱεροσολύμοι προσήκοντες.* that is, *So that if they avoid one curse, they fall under many other. For such shall be also found accursed as are uncircumcised, such accursed as tythe not; and they are also accursed (in the old law) that offer not at Jerusalem.* I confess, this may perhaps seem not to extend to the *African* church (wherin *S. Cyprian* and *S. Augustine* lived) that was far remote from *Epiphanius*, being of the *Greek* eastern church, and so not to sufficiently prove that in those times, no payment was in use there. The like perhaps may be obviously thought of in referring it to the western church of *Europe*. But it seems that the *African*, *European*, and eastern *Greek* churches of those times, had little or no difference betwixt them in the settled policy for their maintenance. And for the *African*; However out of *S. Augustine's* sermons it may be collected, that a payment soon afterward was there in use, yet herein both the *Greek* eastern, and the *African* churches are specially so like each other, that neither in the councils or canons of the one or the other of them, any law at all is found for payment or ordaining any thing touching tythes; nor as I remember, doth the name of tythes once occur in them, or in *Photius* his *nomocanon*, or in *Zonaras*, or *Balsamon*, the chief canonists

* Hereff. 95.

that writ on the eastern canons. I mean here the canons of the *Greek* church of credit; not including those called the apostles constitutions equally belonging to all churches (if under that name to any) of which more presently. But it had been little to the purpose indeed to have had tythes of animal increase paid, while that most bountiful devotion of good christians continued in frequent offerings, both of lands and goods to such large value, as you see expressed in that of the governor of *Rome* to *S. Lawrence* (being archdeacon to pope *Nisus* II.) in the ninth persecution under *Decius*. He tells him ^a that the common fame was that the christians did often

*Offerre, fundis venditis,
Sestertiorum millia.*

And, that,

*Addita avorum prædia
Foedis sub auctionibus,
Successor exhaerens gemit
Sanctis egens parentibus.*

*Et summa pietas creditur,
Nudare dulces liberos.*

No doubt can be but that the governor is here made to speak somewhat beyond the truth; but also questionable, the liberal devotion of the time was very exceeding in offerings.

But, for constitutions of this age; least we should seem to omit any thing that bears the name of one, although merely supposititious, we shall here add more to that cited in the 4. §. out of the old *Clementines* attributed to the apostles; but all will be of equal credit; and were it not for the inequality of readers, none of it indeed deserved a place here. In those *Clementines*, a further command is, to give ^b all thy tythe to the orphan, to the widow, to the poor, and to the stranger. And afterward some constitutions, attributed to *S. Matthew*, are inserted; wherein first is ordained the formal consecration of oil and water, that may have power to heal sick men, to cast out devils, and the like, with *ἐν ὧν Ματθαῖος διατάσσεται*, that is, *I Matthew ordain*. And then, *ἐν τῇ προστάσει πάντων ἀπαρχῶν προσκομίζεσθαι τῇ ἐπισκοπῇ καὶ τοῖς πρεσβυτέρους καὶ τοῖς διακόνους ἐκ διατροφῆς αὐτῶν, &c.* πάντας δὲ δικαίους προσκρίνειν ἐκ διατροφῆς τῶν ἁγίων κληρικῶν καὶ τῶν παρθένων καὶ τῶν ἐν πτωχείᾳ ἵσταμένων; that is, *I further ordain, that all first fruits be brought to the bishop, and to the priests, and to the deacons for their maintenance; and that all tythes be offered for the maintenance of the rest of the clergy, and of virgins, and of widows, and of poor people*. But here is no command of tythes to be given to the priests for their use; but only for maintenance of the less orders of the clergy and of the poor. And therein these constitutions still agree with themselves. But, for the authority of them; take the judgment

of our church, and I think you shall have a general consent in this, that they are not of near the apostle's time, but counterfeits of a far later age; and great men in the church of *Rome* account them no otherwise, howsoever *Turrian* (that first published them in *Greek* out of three old copies, as he says) would needs persuade the world that they are genuine, apostolick, and collected by pope *Clement* I. But I would then he had also persuaded us that the apostles had taught, that the birth of our saviour or *Christmas* day, was to be celebrated on the xxvth day of *December*, as in this supposititious ^c *Clement* is affirmed. The learned know, that until about cccc. years after *Christ*, that is still *S. Chrysostom's* time, that day ^d was not settled, but variously observed in the eastern church, which should have had special notice of the apostolick canons. And *S. Chrysostom* then learned the time of the xxvth of *December* (which yet, most think not to be the exact time) from the western or *Latin* church. Is it likely that till then, the apostles constitutions had slept? Besides, we see, that *Dionysius*, that great patriarch of *Alexandria*, although those of his see and himself, were most curious in the determinations of ecclesiastick times, could not find whence clearly to resolve that question to *Basilides* bishop of *Pentapolis*, *καὶ ὡς ὥρα ἀπογεύεσθαι δὲ τοῦ τῷ Πάσχα ἡμέρας*, that is, *at what hour after the last Saturday of Lent, they should leave off that strictness of fasting*, in joy of the resurrection; or at what just hour *Easter* day, or the feast of the resurrection, should begin. *Basilides* tells him, some think at the cock's crowing towards the morning; some at the *Saturday* evening. And *Dionysius* acknowledges that difference in use. But to set a certain hour of it, he answers him, *καὶ δύσκολον καὶ ἀσάφες*, that is, *both hard and without sufficient ground*; and then falls to examine it by the holy history of the time of the resurrection. But had these constitutions been then in authority, clearly *Dionysius* might soon have resolved the question; for in them it ^e is determined, that this strict fasting should be kept, but *μὴτεν ἀναφροσύνας*, that is, *until the time of cock crowing*. This learned patriarch, (his *Greek* epistle never yet published in *Greek*, with *Balsamon* upon him, was communicated to me by that most learned and courteous Mr. *Patrick Young*, in the rest of *Balsamon's* ms.) lived about cc years after the supposed time of the collection of these constitutions, and surely had used them if they had then at all been, and deserved credit. And who would have made a controversy about the holding of *Easter*, that had in those elder times found it so established, as it is, in those constitutions? But it is not difficult to conjecture out of what kind of shop they came, if you but note the supremacy of all power ^f so arrogated in them to the clergy. The authors of them command, that priests be honoured as kings, and have tribute paid them as kings, and are so bold

^a Apud Prudentium *miri casares* hymn. 3.

^b Διατάσσει τῶν ἀρχαίων. *Εἰσακτ.* ἄ. α. & β. κε. α.

^c Lib. c. canon. 19.

^d Vide *Clement* Alex. Strom. 2. *Epiphani* haer. 51. & *D. Chrysostom* in *τοῦ γ. πρὸς ἡμίαν.*

^e Apud Th. *Balsamon* mss.

in bibl. *Patrii* Janii.

^f Vide *Idem* (si hanc rem obiter velit explicatorem) *synd.* 6. in *Trullo* canon. 99. & *Idem* ad hanc *Dionysii* epistolam, *Theodorum Balsamonem*, & *Ensch.* lib. 3. eccl. hist. c. 23. &c.

^g Lib. c. canon. 18. & 19.

canon. 14.

^h Lib. 3.

as to apply that in ^f *Samuel*, touching what a king would do in taking from his subjects, to the power of bishops, as if they should do so; and they affirm it, as much more reasonable, that bishops should do so; and ordain also with *δασαρχία*, that is, *we constitute*, the like wholly *περί επισκόπων*, that is, *touching bishops*, as there, they say, is ordained *περί βασιλέων*, that is, *touching kings*; Which well agrees also with their reckoning up of the ten commandments, and making the tenth to be *ἡ μὴ ἐλθεῖν παρά τοις ἱερεῦσι κενός*, that is, *thou shalt not appear empty before the priest*. He that made these words to fill the place of one of the ten commandments, seems not to talk like one of the apostles. A thousand things more might be found to disprove the authority that some attribute to these canons. And the answer to *Turrian's* reasons for maintenance of them, are obvious enough. For my part, I think confidently that most of them, if not all, are hardly 10 years old; and therefore no sufficient cause is, why they should have place of credit in any part of our division; as they bear the name of canons or constitutions. For if they were in truth made so long after those whose names give them all their authority, they are all one, for constitutions to be relied on, as if they had been but of yesterday. I only touched part of them in this first *ecce* years, as they were in the *Latin*; the *Greek* being neither then by me, nor much material; although some passages in other translations and to this purpose, if not examined by the *Greek*, may soon deceive a reader of too ready a faith. For one of those other canons attributed also to the apostles as authors, and to this *Clement* as collector, is translated, *aliorum decimae primitiaeve fructuum omnium mittantur episcopo ac presbyteris, & non super altare*; the *Greek* that is turned and set by the *Latin* in the same volume, having not a syllable of tythes, but speaks only thus. *Ἡ ἄλλα πάντα ὡπώρα ἐν οἴκῳ ἀποστείλλεσθαι ἀπαρχὴ τῶν ἐπισκόπων καὶ τοῖς πρεσβυτέροις, ἀλλὰ μὴ πρὸς τὸ θυσιαστήριον*, that is, *let all other fruit (being first fruits) be sent home to the bishop and to the priests, but not brought to the altar*; the meaning being that only first fruits of new grapes before vintage time, or of young herbs fit to be eaten, or such like (comprehended under the words *ἡνὶν γάρβον*, in the next canon before) should be brought to the church; and so are the expositions of *Zonaras* and *Theodore Balsamon*, two great canonists of the eastern church,

Of the V. chapter.

Those abbots spoken of in the I. §. were not of the ministering clergy properly taken; but only principal governors of such as had chosen a separated and single life; such as

are in good number found in *Palladius his Lausiac Historia*, *Cassianus*, and the like more. For that of giving tythes to the use of the poor, it seems it must be understood, that they were most commonly given into the hands of those abbots, or some of the clergy, for their use, and that they dispensed them. Which may be collected out of the testimonies of that age, wherein the goods and treasure of the church is accounted but as the poor's chiefly, in property. Beside those attributes of tythes, and other things consecrated, as *tributa egentium animarum*, and *patrimonia pauperum*, and the like, an observable admonition is, to this purpose, found in *Isidore Pelusiota* (that lived about the beginning of these *ecce* years) made to one *Maro* a priest (whom he often reprehends) but specially ¹ for not leaving the goods of the church and of the poor (that is, what was offered in tythes, rents, and other bounties) to be kept only by the *oconomos*, or dispenser, or steward (who in those times received them for the bishop, and dispensed them by direction of him and his clergy) but carried them home to his own house. *Παύσαι τῶνν* (says he) *τῆς ἀτιθείας, Οὐκ ὁμοίως γὰρ ἔχεται παρά τὴν ἐκκλησίαν αὐτῶν εἶναι τῶν πέντων. Οἰκία δὲ αὐτῶν ἡκούσας πρὸς ἐκκλησιαστικά;* that is, *Leave off this wicked course. For the dispenser hath his name from his dispensing to the poor what is theirs; as the goods of the church are properly*. So *S. Basil* ² files the goods and revenue of the church, *ἐκ τῶν τῶ πτωχῶν*, and the *Greek* lawyers call them generally *πτωχικά* or *provision for the poor*. And hence is it, that divers schoolmen to and fro dispute that question, whether the dominion or property of the revenue of the church be in the clergy; and whether what they give to the poor be due *debito justitiae*, or *debito charitatis*.

I supposed enough had been said in §. III. to convince the common error of them, which derive feudal tythes from the clergy of the time of *Charles Martell*, or affirm any common payment of them then in practice. But it is a hard task to teach obstinate ignorance. Let that of *Eucherius* his vision be as it will (which yet cannot stand with the time of his death, calculated according to the story that remains of him; however indeed, ³ very ancient authors help to justify it) it still rests certain, that the constitutions of his time, which have reference to the many sacrileges committed by him and others, upon monasteries, bishopricks, and the rest of the demesnes of the clergy, never spake a word of tythes; And with that which is there noted in the margin, observe the several transcripts of that law of restitution, made in the synod, or diet, at *Ratisbon*, held under *Caroloman* in DCC.XLII. as it is in ⁴ *Melchior Goldastus*. In his first volume, he gives it thus, *decimas, bona ecclesiastica occupata a prophanis restituiimus*; as indeed both ⁵ *Aventin* and the

^f 1 Sam. cap. viii.

^g 1 Ib. 2. can. 36.

^h In Zonara editio a I. Quirino can. 4.

ⁱ 1 Ib. 1. epist. 269. &

vide ibid. 435.

² In epist. 129. edit. nuper a v. cl. R. Montacutio.

³ Balsamon & Zonaras ad can. apost. 59. & vide

de hac re anonymum de recuperat. eccrae sanctae cap. 34. in vol. *gesta Dei per Francos* dicto.

⁴ Vide Adrevald. lib. 1. de mirac.

S. Benedicte cap. 14. & Flodard. Rhem. lib. 2. cap. 12. & capitular. exhibit. Ludovic. 11. imper. post canonem 59. c. 10. q. 1. edit. Gregoriana.

⁵ Constat. imperial. tom. 1. pag. 15.

⁶ Annal. Boiorum lib. 3. pag. 179. edit. Luf. 2. d. 1614.

^o Centuries have it also literally before him; both out of corrupted copies. But afterward the diligent *Goldastius*, finding a better copy, entirely again publishes the laws of that synod nearer the original: and this one ^p thus: *Fraudatas pecunias ecclesiarum ecclesie restitimus*. Some other copies having *fundatas*; but none, of any authority, *decimas*, *pecunia* being only their wealth or estate in lands; as in more ancient time, *pecunia* denoted chiefly estate in cattle; and then money, as now it doth. I know also, it had a signification that included offerings ^q of fruits and corn, and so might be drawn to denote tythes offered; but that signification was of rare use, and only among the *Gentiles*. Neither (as I think with some confidence) can any man shew me such use of the word in any christian author of the antients. And the very decree of *Thierry* king of France, and that *Charles Martell* the *maire du maison*, of the year ^r dcc. xxx. touching the taking from the clergy their possessions, *ut subveniatur necessitatibus publicis & solatiis militum pro Dei ecclesia, & bono statu reipub. & universique propria pace pugnantium*, as the words of it are; and that of *Caroloman* ^s in dcc. xliii. speak not a word of tythes, but only of *terre* & *casatae* (which were the *ecclesiastic pecunia*) and the small rents to be reserved to the church upon leases made of them, which is, it seems, understood in the more common giving of them into lay hands, so much spoken of by *Flodoard*. That is, laymen had the benefit of them by having leases of them at small rents without fines. Neither is any other thing spoken of in the ^t capitulary exhibited by the bishops of the provinces of *Rheims* and *Rhose*, to the emperor *Lewis II*. When I see any testimony near *Martell's* time, that so may justify the received tale of his prophaning of tythes, as I may change my mind. But seeing so much of his sacrileges left in the story of near his age, and that not a syllable touching such tythes as we here inquire after, nor any thing else that hath reference to the common payment of them, is found in the laws made under him, I still remain confident in what I have admonished; and, I think, so will every man else, that hath an impartial eye of judgment. But, for that which I have here noted touching *casata*; perhaps *casata* should rather have been interpreted a *messuage*, or *dwelling house*. For it appears in that capitulary exhibited to the emperor *Lewis*, and in some other testimony of that ^u time, that the reservations *ad restaurationem terrarum* (which may be satisfaction given by the lessees of the clergy, in rents of land) were *nonae* & *decimae* (where *decimae* have not to do with payment of tythes out of meer lay fees, but only were received by reservation) and out of every *casata* xii d. So it may be, that *casata* is no quantity of land

there, as I have conjectured, but a house only. If it be, you see whence I was deceived: pardon me; perhaps it was an error. I willingly acknowledge so much upon this review. I acknowledge it, if that capitulary of the bishops and the other testimony be therein authentick. I somewhat doubt them, because the most known and certain laws of *Martell's* time, speak only of xii d. to be reserved out of every *casata*, and the *nonae* and *decimae* grow not elsewhere into use till after the beginning of the *French* empire; and if nothing but *casatae* were spoken of, there were reason enough why they should be taken for land. But the *nonae* and *decimae* in those authorities, are referred to land, and the xii d. only to *casatae*.

That in the IV. §. of the tythe of time in *Lent* out of *S. Gregory*, is not easily perhaps apprehended by every reader without a little more explication. The *Sundays* as they were exempt out of the number of days, so were they from the fasting of *Lent*. Thence comes his conceit of the tythe of time in xxxvi days, which is $\frac{7}{12}$ of ccc. lxx. so fractions be omitted: and to make up forty which is expressed in *quadragesima*, the known name for *Lent*; the four days preceding *quadragesima Sunday*, are to be added: this was the intent of that fancy. But how slight, and nothing to the purpose, that observation of the tenth of time is, (however the canonists, as sworn to their text, make of it) is easily seen, not only in the abused liberty of calculation of it, but also by the customs and laws of both churches, the west and east, in their various limits of this time of fasting. Pope *Telephorus*, they say, ^v made it vii weeks: and other diversities hath it had in the western church: and the eastern church exempted ^w both *Saturdays* and *Sundays* from fasting through all *Lent*, except only the *Saturday* that next preceded *Easter Sunday*; as also they fasted not on the day of the *Annunciation*. What regard had they then, think you, to the tythe of time?

Of the VI. chapter.

THE practice of payment in the third cccc years, was parochially observed in ^x some places, but especially by clergymen to clergymen, who (with such as were reputed among them) subjected themselves more to their canons, than the laity could be brought to do. But it seems somewhat plain by the many examples of arbitrary consecrations to monasteries and other churches, related in §. II. (whereto join also the *English* practice in the XI. chapter, and the ^y charter of *Henry* the eighth, duke of *Baviera*, of the tythes of *Ranneshofen*, given to a church of *S. Pancras*) that the payment of them parochially performed by laymen,

^a Centur. 1. cap. 7. & 9.

^b Tom. 3. pag. 117.

^c Festus Paul. in pecunia & ib. Scalig.

^d Goldast. tom. 3.

pag. 648.

^e Idem tom. eod. pag. 118.

^f Poell. c. 59. c. 16. q. 1. edit. Gregor.

^g Vide Goldast. tom. 3.

pag. 647.

^h Anastasius in vita ejus. & vide Baronium sub ann. 174. & Polydor. de invent. rer. lib. 6. cap. 3.

ⁱ Sy-

nod. 6. in Trull. can. 55. & videtur etiam consil. apostolorum dictas. lib. 1. can. 13. 14. & 18. & consule Euseb. eccles. hist. lib. 5. cap. 26. & Societatem hist. eccles. lib. 1. cap. 11.

^j Praeter ea quae ad hanc rem, §. 1. 2. 3. habemus, videbis Hincmarum in opere.

capitulum 55. ad Laud. episcop. cap. 1. & Rabanum apud centuriatores. cent. 9. cap. 7. de iurejurando quod exigebatur nonnullum.

^k Apud Aventin. annal. Boiorum lib. 6. pag. 379. edit. Basf. 1615.

was yet frequently omitted or continued at their own wills. Whence otherwise could the founders and benefactors of monasteries have made tythes part of their endowments? It was not, in these elder times, so much by giving them churches (as the most that speak of this, ignorantly think, telling us that all tythes came into monasteries by appropriating of parish-churches) as by conveying to them divers tythes alone and newly created; and after those gifts, consecrations, or new creations, no other tythes were paid upon any other right, out of that land which was so charged with them. But most of those consecrations were at one time or another at length confirmed by popes and bishops, and so clearly after enjoyed; which plainly also supposed a former strength in them. For regularly, *confirmatio ex proprio significato denotat firmitatem alius confirmati*, as *Panormitan* and other canonists say, and *nihil juris novi tribuit, sed tantum vetus confirmat*. But it is plain, that after parochial right established, that is since about M.C. when the canons grew more powerful, and obedience to them became more ready, such confirmations by bishops and popes, and such consecrations, creations, or new grants by laymen, of tythes, have been taken and declared clearly void; as you may see in a decree of ^d pope *Innocent III.* touching tythes, so granted by a knight of *Berry* in *France*, and confirmed by the archbishop, and ^e in another of his about tythes so given or created to a church by the king and queen of *Hungary*, and after confirmed by a pope or two. And who can doubt now, but that all such grants (in regard of prevention of the parson's right) be not only void by the practised canon law of this day, but also by the secular or common laws of most states, if not of all, where tythes are paid, in christendom? For admit at this day, that *Titus* grant *decimas suas* of such an acre to the parson, abbot, or bishop, of such a church, and this be confirmed by whom you will; the tythe due from him parochially is not touched by it. Why? Because they are settled *jure communi* (as the law is practised) in the parishrector; But in those elder times, such an arbitrary grant vested the tythe in the church, to which it was given, and no other afterward was paid. Why? Because then, notwithstanding the canons, no *jus commune*, no parochial right of tythes was settled or admitted in the practice of the laity. And for those antienter grants; Be not deceived by such as tell you they were always of tythes formerly infeodated from the church; that hath no ground to justify it. Neither can any man at all prove any common course of such infeodation of tythes from the church into lay hands, to have been in any state till the later times of reformation of religion in some places, and dissolution of monasteries: and those two examples which are in pope *Innocent's* decrees are expressly of new creations, at least not of infeodated tythes, as every canonist will acknowledge. But clear-

ly, they both were in themselves according to the many other, but they had not the fortune to be confirmed in such time as the pope or clergy usually gave way to the former practice of arbitrary consecration. And doubtless also, after such time as the clergy saw that the canons, made for parochial right of tythes, had gotten force, and that the former creations or grants of tythes by laymen (which were indeed practised against many canons both papal and synodal) were, by that name of laymen's grants, creations or consecrations, declared utterly void by the pope and his canon law, although confirmed by whomsoever; such of them as had originally no other true titles to tythes so commonly consecrated by laymen, subtly enough in the next four hundred years, left off the pretence of their lay grantor's bounty, (especially if the grantor had been a common person) and betook themselves only to prescription ^f of xl. years, and to what other times might be allowed to settle a right to them upon a possession of tythes; and by that way, retained safely what otherwise, if they had held themselves to the deeds of their lay grantors and to confirmations, had been in danger enough of being recovered from them by parish rectors. So that, when the prescription was good in regard of time and possession; although the original title itself were naught; yet because any other just title might be pretended to ground the prescription on (which also was ^g not of necessity to be proved in incorporeal things) it was not difficult to have a fair course to maintain their possessions and right of such consecrated tythes, as had been possessed so forty years before they were questioned by parsons, which claimed them *jure communi*. For against them, such a prescription by any other church, abbey, or bishoprick, or such like, is a good title. Remember also their erecting of parochial chapels within the larger territories, out of which they had portions. Plainly, the erecting of such chapels for parish churches (the cure being there served by some monk or vicar, instituted upon the presentation of them which had the granted portions) made those portions at length also in many places be reputed for parochial tythes, due in regard of those parochial chapels. But what course soever they took; it seems certain, that the titles derived from lay consecrations were after this third cccc years carefully concealed by the possessors in such publick records of their revenues, as were of more common and open use in their legal proceedings at the canon law, however they remained still in their antienter and more secret chartularies; and with us I have very rarely, scarce at all, seen an instrument of them in their ledger-books, or otherwise, written in a hand that is later than *John's* time. The most are before him. But I have seen catalogues of the time of *Henry* the third and *Edward* the first, of many large portions of tythes, that doubtless came first from arbitrary consecrations, and that through most

^a Ad tit. de dec. c. dudum. num. 11.

^b Innocent. ad dict. loc. & tit. de confirm. ut & inquit. c. cum dilectas 4.

de his que f. a. prael. sine dec. c. 7. cum apostolica.

^c Tit. de dec. c. dudum 31.

^d Vide Innocent. IV. ad tit. de praelcripti. c. si diligencia; & ad tit. de decim. c. dudum &c.

^e Extr. tit. de praelcripti. c. 6. & 1.

of the dioceses of *England*, wherein not the least mention is of any grantor, only possession is remembered; and that, by prescription, was to be justified. Some titles also I have seen made to tythes in libels of the time of *Henry III.* especially in the leiger books of *Reading, Osney,* and *Pipewell*; but in none of them ever any derived from consecrations. Neither indeed, in that antientest formulary of the canon law (I mean *Durand*, that lived about ccc.l. years since) is any other libel for tythes, than such as make the title canonical. None that touches lay consecrations; which divers years before his time became as much concealed in legal proceedings of the canon law, as they had been in the more antient times desired and hunted after by such as were enriched by them. This of arbitrary consecrations, I presume, is like strange doctrine to most men. It may well be. For the truth of it, I think, was never before so much as pointed at by any that hath written of any part of our subject. But I doubt not, but every understanding reader will think these things here, now shortly noted on them, to deserve his consideration, which I desire him also to refer to the xi chapter. And also let him apply to them the admonitions touched presently in appropriations.

For appropriations which are in the III. §. they consulted (as you see there and in the xii chapter) for the purpose, either in conveying parish churches appropriated with tythes settled in them, sometimes by a continuance of payment, sometimes by consecrations, or by both; or of churches that were then appropriated when (according to the use of the time) none or few tythes were paid to them, yet, afterward in the hands of the monks, or such like, when the canons for payment of tythes came into force, got parochial payment to be made to them; or thirdly, in passing of tythes formerly created, and in *esse*. So that as by consecrations, tythes newly created, were settled in monasteries and the like; so, by appropriations, churches with tythes in *esse*, or with the pretended right to them, and tythes alone (but formerly in *esse*) were conveyed to them. The whole appropriation of tythes, with churches or churches alone, we shew, in that antienter time was made by the patron. The churches with tythes (by the name of *ecclesia cum decimis*, when tythes were paid to it) was in point of interest given by him; and many more churches have been so appropriated, than by the later and more known course. Neither, I think, have many new appropriations been since made; nor many in regard of the number of the other. But deserves not this then, another kind of consideration than is commonly dreamed on, among them, which make tythes due by the divine moral law to the evangelical priesthood? If they be so; what had the patron, as patron (were he either temporal or spiritual) to do with them in conveying them to monks, friars, nuns, poor people in hospitals? None of this, by that name, are of the priesthood. And that way, they were so equally due to the ministering priesthood before the patron's title to the church,

that whatever he could do after he were patron (although also his act were confirmed by whom you will) could not at all, it seems, touch them, or convey them from him that should afterward exercise the spiritual function of the church. Consider tythes so due; and how could any monastery derive to itself any title to that self same tythe that was so due to the priesthood? And if it had not the self same tythe, but by prescription, or other civil title, having the glebe of a church, had also a profit by the name of tythe, as annexed to the church, no otherwise than other lay endowments; For no man can doubt but that any kind of persons may enjoy a profit under the name of tythe or tenth, as well as a rent of the ninth part or of the eleventh; Who then is it that now detains the tythe due by the divine moral law, in cases of appropriations? Doth the monastery, or those which have such appropriated tythes by conveyance from it? Or rather doth not the parishioner, that is bound to whatsoever is by that law due, although he pay never so many other tenths due only by some civil title? Or by that opinion, is not he that receives the appropriated tythes bound to pay a tenth of it to the minister, and the parishioner a tenth of his nine parts? I affirm nothing here; It is no place for me to do it. But let these things be first considerable to every one that talks of appropriations, and concludes tythes due *jure divino morali*. And, for laymen right to the appropriated tythes (that is, such as did either vest in the monasteries by appropriations, or at least have been enjoyed by reason of them) let him examine it rather thus; May that which either grant or prescription, or other civil title once settled and so even consecrated to God and holy uses, although abused, be afterward prophaned to lay hands? But it is a gross error to make it clear, as many do, that if tythes be not due to the priesthood *jure divino morali*, then appropriated tythes may be still possessed with good conscience by laymen; and that if otherwise, then they may not. For though they be not due so; yet is the consecration of them in the appropriation, nothing? For if they be not due so, then it will be clear, I think, to all, that they might pass in the appropriation, as other things, subject to the titles of humane and positive law. The many execrations annexed to the deeds of conveyance of them, and poured forth against such as should divert them to profane uses, should be also thought on; and let them remember also, who says, that *it is a destruction for a man to devour what is consecrated*.

To what we have here of episcopal right pretended to tythes, especially in *Germany*, and of tythes appropriated by bishops, you may add the examples of *Thietmar*, bishop of *Werden* in *Saxony*, that¹ about M.C.XI. *contulit ecclesie sue undecim decimas, & contulit fratribus decimam in Esse*. As also his successor *Herman*, *contulit ecclesie sue mediam decimam de Heselwerder, & integram in Rakelstede, & Tunderling*. And *Luder*, bishop there, about

¹ Proverb. xx. 25.¹ Krantz, metropol. lib. 6. cap. 19. & cap. 29. & lib. 7. cap. 48.

M.CC.XXX. *contulit ecclesiae decimam* in Emeleudorp cum advocatia, et ordinavit scolariis decimam in Mendorp. It seems, this their giving of tythes to their church, was an assignment of them to the increase of their prebends, or such like. For it cannot, I think, be understood of tythes given to the bishoprick by themselves, who, as bishops possessed or pretended right to tythes generally in their diocese. But also, with that noted here touching Gerold bishop of Oldenbourg (or Lubeck) his urging them of the deserts of Wagria to pay; observe the words of his persuasive letter sent to them to get their tythes. *Deo, fidei he, gratias ago, quod multarum in vobis parent virtutum insignia, quod videlicet hospitalitati & alii misericordiae operibus propter Deum insistitis, quod in verbo Dei promptissimi, & in construendis ecclesiis solliciti estis; In legitimis quoque, ut Deo placitum est, castam ducitis vitam; Quae omnia tamen observata nil proderunt, si cetera mandata negligitis, quia sicut scriptum est, qui in uno offendit omnium reus est. Dei enim praeceptum est, decimas ex omnibus dabis mihi, ut bene sit tibi & longo vivas tempore, cui obedierunt patriarchae, Abraham scilicet Isaac & Jacob, & omnes qui secundum fidem facti sunt filii Abrahæ, per quod laudem etiam & præmia aeterna consecuti sunt. Apostoli quoque & apostolici viri hoc ipsum ex ore Dei mandaverunt, & sub anathematis vinculo posteris servandum tradiderunt. Cum ergo Dei omnipotentis proculdubio hoc constet esse praeceptum, & sanctorum patrum sit autoritate firmatum, nobis id incumbit negotii, ut quod vestrae salutis deest, nostro in vobis opere per Dei gratiam supplatur. Monemus ergo & obsecramus omnes vos in Domino, ut mihi, cui paterna in vos cura commissa est, animo volenti, quasi filii obedientiae, acquiescatis, & decimas prout Deus instituit, & apostolica banno firmavit autoritas, ad ampliandum Dei cultum, & ad gerendum pauperum curam ecclesiae detis, ne si Deo quae ipsi debentur subtraxeritis, & substantiam simul & animam in interitum mittatis aeternum, Valet.* It seems, he was in some confidence, that because he was a bishop, he might make them believe any thing of the patriarchs and the apostles. And you may see he loved the profit of the tythes so well, that he would not stand upon an unlucky venturing his credit in divinity, or upon offering a plain falsehood, in writing for them. For though they were due generally as he would have them, yet how would he have proved that all the patriarchs, and all that were by faith as the sons of Abraham, paid them? Or that thereby they had all gained *praemia aeterna*? And whence could he have justified it, that the apostles ordained that they should be paid? It may be therein, he meant the constitutions of the apostles, of which enough before. If he did, how could he have strengthened their authority? But they to whom he sent, remained still as far from obedience, as the historical part of his let-

ter was from truth. And the truth was, he could by no means get any tythes of them. But for that (in this §.) of episcopal right, or the right of the evangelical priesthood, so much pretended against tythes enjoyed by monks, that were indeed laymen, however reputed as a kind of part of the clergy; It seems, that in those days, the bishops and priests often stood so much on it, and so much and so often laboured against consecrated and appropriated tythes, possessed by the monks (for they knew it was to no purpose to urge the lay owners, who after they had given one tythe by consecration, would give no more to any of them) that the most common place which in their synods and sermons they dealt on, was the right of tythes, as due to the priesthood. And in so much also, and so untimely was that common place used, that there talking of it was become a proverb to denote their frequent going from the matter, as if most usually they fell into that, when they should have talked of something else. This is justified by a passage of the monk Aimonius in the life of Abbo abbot of Floriacum, where he speaks of a synod held under Robert king of France, about the year M. (when Aimonius lived) in the abbey of S. Denis. Very many bishops, fidei he, were present at it, *qui cum de fidei puritate & de corrigendis tam suis quam subditorum pravis moribus sermocinari debuissent, iuxta vulgare proverbium, cunctum suum sermonem ad decimas verterunt ecclesiarum, quas laici ac Deo servientibus monachis auferre moliti, resistent eis in hac re hoc v. Dei cultore Abbate, promiscuum in se vulgi concitavere manum.* And such danger did the bishops, in urging it, draw on themselves, that they were driven all to dissolve the synod by running away. You see here *sermonem ad decimas vertere*, was as a proverb to go from the matter; and for those words, *laici ac Deo servientibus monachis*; I think they are not to be interpreted *laymen and monks*, but *monks that were lay, and spent their time in the service of God*. For there is no doubt but the bishops and priests objected the name of *laici* to the monks here; and so was it fit, in the relation, to name them; and it was no wonder that the common people (whose bounty in bestowing of tythes on monks, should thus have turned to nothing) so fiercely opposed them. If you understand *laici* by it self here, then it may denote the arbitrary detaining or disposing of tythes by meer laymen, which, I must confess, Abbo and his monks, and all other monks whatsoever had some reason to withstand; for they gained much by it. But, I doubt, it cannot have reference to lay infeodations. For as yet I could never see the least testimony of an infeodation of tythes until many years after Abbo's time; it might perhaps denote them also; but I dare not clearly affirm or deny here.

The IV. §. is of ancient infeodations of tythes. What is in old testimony of them, is there delivered; but for time; we neither fetch them

¹ Helmoldus presb. hist. Sclavorum csp. 95.

² Vitae Abbonis Floriaci, csp. 9.

from *Charles Martell*, not from the holy war of between M.XCV. and M.C. as others do; plainly both those opinions are false. And it is as certain that they are false, as it is difficult to find the true beginning of infodations. Neither, I think, did any man ever refer them to *Charles Martell*, before *Martinus Polonus*, archbishop of *Cosenza*, and penitentiary to the pope, who wrote about M.CC.LXXX. *Ecclesias* (saith he of him) *spoliati, decimas militibus conferendo*; and this being through many hands received, hath to this hour abused many mens credulity. But thereof, enough already. They are as far out, that derive them all from gifts made by churches, or impositions by princes: Yet that most common opinion, that they all came first out of churches, is elder than the other, and as ancient at least as *Frederick Barbarossa*. For in the controversy betwixt him and pope *Urban III.* about investitures, *Scimus* (are the words) *decimas & oblationes a Deo sacerdotibus & Levitis primitias deputatas, sed cum tempore christianitatis, ab adversariis infestarentur ecclesiis, easdem decimas praeponentes & nobiles viri ab ecclesiis in beneficio stabili acceperunt, ut ipsi defensores ecclesiarum fierent, quae per se obtinere non valerent*. There is no question but this opinion had soon authors enough among the clergy. For, the pretence of it was like enough a great persuasion to some laymen to give in their infodated tythes to the church; and this the canonists, for the most part, and generally the lawyers of most states, take for a clear truth; which I much wonder at, seeing that while they take it so, yet they interpret that canon *prohibemus* (which is the principal provision against feudal tythes, and was made by a council, that best knew the practice of the near former times, against such as were created by laymen to laymen) to have been the stay only of further infodations into lay hands; that is, every lay infodation that hath force, they suppose to be of before the time of that canon, as if the infodations from lay to lay, there forbidden, were those, from which such (for the most part) as continue, had their original; and therein doubtless they are right. And the later canonists, that would apply it to all infodations then in esse, are grossly deceived, or wittingly strive to deceive. For in that respect, the canon is in no state in force. Neither was it antiently so interpreted by the canonists. But in the other, that is, touching new creations of feudal tythes (in prejudice of the church) by laymen to laymen, it hath been ever admitted, and is in practice both in *France* and *Spain*. And what better interpretation of it can be than the continual practice upon it since the making of it? And so how can it then be supposed, but that laymen before, were chiefly the original authors of them? But some lawyers here to justify their received opinion, bring this argument. Had they not come from the church, they say, then had the tythes themselves,

which are now possessed by laymen through infodations, paid tythes also to the church, by reason of the many canons made for payment out of all yearly increase. But this reason clearly moves nothing; for the self same might have been objected against the known beginning of tythes created and consecrated to monasteries by laymen; Plainly by the canons, notwithstanding such consecration, the parochial right to the evangelical priesthood could not be diminished; and by them also, as well a tythe out of the tythe consecrated, as out of the nine parts of the parishioner, might, for ought can be proved against it, be demanded by the parish rector. But we see clearly both the original of those consecrations to have been from laymen; and also that no tythe was, or is paid either out of them, or out of the rest of the profits of the nine parts. How then can the other argument touching infodations better conclude here? Beside, it insists upon canons, and would conclude practice from law; which course of proof, used by most men that write of these things, is gross and ridiculous. For whoever but indifferently observes the story of the elder time, together with the laws, shall soon find that in the canon law especially, an argument from *debere fieri* to *factum esse*, is scarce so sound, as that so hinted at among children, *a posse ad esse*. The truth seems to be, that both in consecrations, and infodations, and appropriations of tythes, there was not any other thing thought on, than the name of tythe, and the right of tythes generally due to the church; as if every thing being the tenth, and by that name as it were specified, were presently the clergy's; so that whatsoever was by that name given away to meer laymen, or to monasteries by new creation, in either consecrations or infodations, was, it seems, taken always to be the self same individual tythe, which was supposed due to the clergy; Which also, doubtless, was a cause why many infodations having original only from laymen, were falsely supposed to have first come from the church. For how easy was it, that that, which out of its own name only of *decima* was presently taken as to be due to the church, should be titled an ecclesiastick right, and then in the passages of them which would have had it so, be reckoned among such things as the church had a title to by a former possession? And clearly, many of the laity also could not but be very inclinable to that opinion. For so long as that held, it is likely they resolved they needed not to pay any more to the church. For when the church would not keep the feudal tythes, when it had them (they thought it once had them all) they conceived doubtless there was no reason why should pay it any more or other tythes. Thus perhaps upon divers grounds and causes, both the laity and clergy deceived themselves, in thinking of the original of these infodations. But herein that which we have touched before, to be considered in consecrations and appropria-

* Apud Melchior. Goldast. constit. imper. tom. 2. pag. 50. consil. lib. iii. de appropriacione. an. 266. pag. 1110.

* Et vide cap. 7. §. 3. ad finem.

* Bertrand d'Argentre ist

tions is also considerable. For what could such infodations by laymen to laymen, hurt the right of tythes which was in the priesthood? Especially if due either *jure divino morali*, or by any positive law antienter than the infodation. But we have not affirmed, that no infodations came originally from the church. Questionless some did, and beside the examples already noted, you may see that of *Ratherius* ^p who *ecclesiæ de Hauchis* (in France, about the year M.C.XX.) *decimam laicali usurpatione tenebat*, as *Ivo's* words are; and he gave the church to an abbey of *S. Martins*, and *minutas in præsentiarum monachis dimitendo concessit decimas, & decimam de culturis monachorum eis concessit habendam post sui decessum*. Here it seems, he had inheritance in the tythes. For that other conjecture; that they came first from impositions made by princes; I doubt it hath no kind of probability. Indeed it appears, that antiently in *Turingia*, the people were driven, before their christianity, ^a to pay tythes to the kings of *Hungary*, both of their annual increase, and of their children also; And in the government of the king that was declared by *Samuel*, it is said, *he will take the tenth of your vineyards and give it to his chief servants, and to his officers*. But where shall you find the least mention of infodations made of such kind of tenths? Or any touch of them in the complaints of the clergy against infodations? And withal, nothing hath been of less practice than giving away in perpetual right, any such revenue due to any crown or state, only by special right of supreme majesty. But admit, these had their original this way or any other as you will; unless they can be proved to have been made of the very self same tythe which is due to the ministering priesthood (which can never be done; saving only where the infodated tythe was at first received and possessed by the church by force of the law of tything, not by arbitrary consecration; in which case also it is considerable whether a layman could be at all capable of the *fructus* only of them, if due by an immediate express law of God.) I see not how they should more prevent parochial payment to the ministering priest, than the payment of rents in *terrages*, or quantities in corn, under the name of tythes to landlords, should diminish the right of the spiritual tythe. Which way had either such a fifth, as was *Pharaoh's*, or the tenth spoken of by *Samuel*, to be taken by the king, touched the tythe due by a superior or former law, to the *Levitical* priesthood? Both might well have stood together. Might not so, nay, should not so, tythes remain payable from the possessors of the nine parts to the evangelical priesthood, notwithstanding infodations or any reservations whatsoever, if they be due by a superior or former law, especially if due by the moral law? And that law should be urged rather against the tenants of the land, than a-

gainst the perners of the feudal tythes. And that common distinction of the canonists, of *jus percipiendi*, & *fructus decimarum* here, is a mere shift, and nothing satisfis, unless they could also teach us, how the *fructus* were the very self same always in infodations, and that they were derived from a *jus percipiendi* in some clergyman. Perhaps too much of these things; which are little or nothing applicable to *England*, where we have scarce any example of a tythe, that was in its nature feudal; other than in such as were taken from monasteries, by the statutes of dissolution, and may still be called, as originally, by the name of consecrated or appropriated tythes, although now infodated. But thereof see the XIII chapter.

To the V. §. that speaks of exemptions; for matter of story may be added that of the *Hospitalers*. After their exemptions given them with the two other orders; about the year MCLX. in the eastern parts they, *tam domino¹ patriarchæ quam cæteris ecclesiis prælati multas tam super parochiali jure, quam super jure decimationum, cooperunt inferre molestias, &c.* and received such as were excommunicated for nonpayment of them. *De prædiis autem suis & universis redditibus, quocunque jure ad eos devolutis, omnino decimas negabant*. Where, by the way, note, that in this eastern church (which, after *Jerusalem* was recovered, and made a kingdom subject to western princes, should have been fashioned according to the canons of the western church) tythes were now appointed payable, although no authentick law of that old eastern church, once mentions them. But both in this and other things, the people of that church were still (notwithstanding the new kingdom of *Jerusalem* possessed by *Europeans*, and the pope's authority extended to them) most ^a obstinate and refractory against the policy and institutions offered them, either in command or example from the western.

After the opinions of the age in the VI §. the laws both imperial, provincial, and pontifical, follow in the VII. Upon which, let it be considered, whether a consecration of tythes were so made by the power, and law of the church or commonwealth, or both, in several territories, according as the laws extended, that no prophane or detaining them or any part of them, might afterwards be lawful; and the like should be carefully thought on in the I. §. of the viith chapter, and in the viith chapter which hath the laws of *England*, for the same purpose. The force of the words of all those laws; the authority that made them; and the territories to which they were extended, are especially to be observed by every one that here looks after humane positive law. For many talk and write of that, and tell us here of *jus ecclesiasticum* (at least if they fail in their arguments from *jus divinum*) but whence that *jus ecclesiasticum* is, and where or when made, they little

¹ Two epist. 286. editioe secunda, primaedreft.

^a Centur. Magdeburg. 2. cap. 2.

^b Sam. cap. viii.

^c Eusebium

generis, ich de-may etiam nominer, provenus dominis solvantur in Gallia, in Germania, alibi, videlicet Berran. d' Argenterre, conf. Rit. art. 200. pag. 1100. & specul. Swan. lib. 2. tit. 10. §. 2. &c.

^d Will. Tyrus de bello sacro lib. 11. cap. 3.

constat ex Martini Samuï Tosselli secret. fideium lib. 3. part. 2. & epist. 2. & anonym. de recuperat. Terræ Sanctæ cap. 18.

enough

enough know. For what hath a provincial council of one nation to do with another? What hath the imperials of the old *French* empire to do with *England*? Nay, what hath the pope's decrees to do here? But because there was a time when their authority was more largely acknowledged; their decrees, that bred much of what now justly continues in some states (which also justly now deny their authority) remain most observable. And we have given them in their places.

Of the VII chapter.

IN the last cccc years, beside the establishment of parochial right in tythes, and the various opinions touching the immediate law whereby they are due; the practice of most christian nations, as it might be had out of their laws and lawyers, is faithfully related. And to what is there brought, add that of the law of *France*, whereby by the right of the tythe of all mines is claimed by the king, as a *droit de souverainete*, according as it is declared by two edicts published of *Charles IX.* And verified also by the parliament of *Paris*; according also, the old imperial law was. But through all here, you may see that the customs, statutes, and common laws, especially of *France, Italy, and Spain*, and of most other, if not all states, permit not, so favourably for the clergy, and exaction of them, or suit to be so generally brought for them, as the laws of *England* did before the statutes of dissolution of monasteries, and still do, if you exempt those cases which are founded only upon those statutes. What statute or practice is in this kingdom, that equals, the *Caroline*s of *Spain*, or the *Philipine* of *France*, which are general laws for customs (*quatenus* customs) *de non decimando*? And whereas *England*, until the dissolution, had scarce a continuing infodation into lay hands (of which see the xiii chapter) nor could a lay man by the common law, before the dissolution, make any title to tythes as to lay inheritances; in other nations tythes infodated have been from above a almost 90 years frequent in use, and still continue legally in lay hands, and are subject wholly to secular jurisdiction; as also other tythes paid to the church are, wherefoever any such suit is commenced for them in their spiritual courts, as stand not with their liberty challenged from their secular or common laws. For every christian state hath its own common laws, as this kingdom hath. And the canon law every where, in such things as are not merely spiritual, is always governed and limited (as with us) by those common laws. For by that name are they to be called, as they are distinguished from the canon law, which hath properly persons and things sacred only and spiritual for its object in practice, as the common laws deal with things and persons, as they have reference to a common, not sacred, use or society established in a commonwealth. Who

knows any thing in holy writ, knows the use of the word, common, to be so distinguished from sacred. Indeed it hath other notions there also, and it is otherwise understood in *jus commune*, frequently among canonists and civilians. But these nothing at all hurt the convenience of this denomination. For by them, *jus commune* is used as it is opposed to *municipale*, or *consuetudinarium*. But here, and in the denomination of the *English* laws, as it is distinguished from sacred or spiritual; and so in this sense the allowance of customs, and parliamentary statutes as they ought, fall under the name of common law with us. Here I doubt not, but it will be an obvious objection, that I should rather call the supreme and governing law of every other christian state (saving *England* and *Ireland*) the civil law; that is, the old *Roman* imperial law of *Justinian*. For such a reigning, but most gross ignorance, is every where almost to be met withal in *England*, that you shall have it affirmed for clear that, *all other states are governed only by the civil law*. Indeed, if they, which say so, understood civil for that which is the *jus civile* of every singular state, it were but the same to talk of civil and common law. For the common law of *England* also is the *jus civile Anglorum*. But it is even with one mouth pretended usually, that the body of the imperials, read and professed in the universities, is the civil law, that governs (as they say) all other states. But this, howsoever received through lazy ignorance, is so far from truth, that indeed no nation in the world is governed by them. For wheresoever they are supposed to govern (let the brief-clearing of so common an error, get pardon for the digression) it must be taken, that they either govern by their own original authority, as they are imperials, or from their being received for laws into other states, which are nor in that first way subject to them. According to that first way, only the empire, and perhaps a good part of *Italy*, should be ruled by them. But it is plain, that for the most part, the disposition of inheritances, punishing of crimes, course of proceedings, dowers, testaments, and such other, which are of greatest moment under the legal rule, are even in those states, where, by reason of their first institution, they retain a kind of authority, ordered by most various customs and new statutes of several provinces and cities, so differing from those old imperials, that the whole face and course of them is exceedingly changed in practice. This is plain to every one, that observes but the divers customs and ordinances of the states subject to the empire; the *jus camerale* collected by *Petrus Densius*; the *Nemesi Karolina*, as it is set forth by *Georgius Romus*; and the many published decisions, or reports both of the imperial chamber, and the *rota*'s of *Rome, Naples, Piedmont, Mantua, Genoa, Bologna*, and other parts of the territory of *Italy*. You shall find those decisions, in matters of greatest moment, most commonly grounded on customary law, or

* Ordonances de France liv. 1. tom. 2. de mines & mineres

later constitutions. So, that to affirm, that in these places, the old imperials, or that civil law (as they call it) governs, is as if (for example) an equal ignorance should tell us, that *Spain* was governed only by *Alfonso's partidas*, and *Scotland* only by *Malcolm's laws*, or the *quoniam attachamenta*; or, that in the time of the old emperors, the *Roman* state had been always governed only by the *xii tables*; or, that *England* were legally ruled only by the grand charter, or by the two volumes of old statutes. Like accession and alteration as any of these have had, is found in the empire and in *Italy*; where the imperials have, through the power of the emperors and ³ popes, any now continuing authority. Now, for other christian states, which acknowledge no superior, nor any subjection to the empire (except *Portugal*, where the *Roman* civil law is authorized, by an ² ordinance of state, in cases which are not literally comprehended in the customs or constitutions of the kingdom) as *France*, *Spain*, *Scotland*, *Denmark*, *Poland*, the city of *Venice*, and what also in *Germany* hath made itself free from the empire; what colour is there, that the imperial civil law should govern in them? Indeed in all of them, I think, the reason of it brought into method, is used and applied commonly to argument, when any of their customs or statutes (which are especially in *France* and *Spain*, very voluminous) come in question, because the practisers studied it in the universities, and had thence their degrees given them; which yet they had not, till about some cccc years since, neither before about that time, was a doctor or professor of them known on this side the *Alps*. But as it is law, it neither binds nor rules with them, no more than the old stories of *Hierodotus*, *Thucydides*, *Diodore*, *Polybins*, *Josaphus*, *Livy*, *Tacitus*, and the like, or *Cicero* and *Demosthenes*, or *Plato's* laws, and other of that kind; which are equally sometimes used for reason or example, specially by the practisers of *France*. And so the old imperial civil law valet pro ratione (as *Bertrand d'Argentre*, president of the parliament of *Rennes* ² says) non pro indulto jure; & pro ratione only quantum reges, dynastiae, & republicae intra potestatis suae fines valere patiuntur. And in *France* and *Spain*, laws ^b were some ccc years since expressly made, that the imperials should have no force in them. And, in *Scotland* it is ordained, that no laws have force there, but the king's laws ^c and statutes of the realm; and that it should be governed by the common ^d laws of the realm, and by none other laws. Doubtless, custom hath made some parts of the imperials to be received for law in all places where they have been studied; as even in *England* also, in marine causes, and matter of personal legacies. But is *England* therefore governed by them?

It were as good a consequent to conclude so, as to affirm, that any of the other states were, because some petty things are ordered according to some imperial text received and established by custom. But this may seem no fit place to speak more (perhaps not so much) to clear this gross error of such as yet pretend to know more than vulgarly, but can make no difference betwixt the use of laws in study or argument (which might equally happen to the laws of *Utopia*) and the governing authority of them. If any desire to search further here, beside the authorities cited in the ^e margin, let him especially see *J. Baptista a Villalobos* his *Antinomia juris regni Hispaniarum ac civilis*, and note especially, *La conference du droit Francois avec le droit Romain*, composed by *Bernard Automne*, and observe both the volumes of statutes and ordinances of *Spain*, *France*, *Scotland*, *Poland*, and of other countries, together with the various provincial customs, especially in *France*, with the arrests, decisions, and playdoies, of that kingdom, and he shall soon be confirmed in that which a great civilian of *Italy*, is ingenuous enough to tell us; *Hispania, Anglia, Scotia, Balia, Hibernia, Alemania, Dacia, Suetia, Ungaria, Boemia, Polonia, Bulgaria*,^f non utuntur legibus seu jure civili, sed specialibus consuetudinibus & statutis, that is, they are all governed by their own common laws. And that most learned friar ^g Bacon, of his time; *Omne regnum habet sua jura quibus laici reguntur, ut jura Angliae & Franciae, & ita sit justitia in aliis regnis per constitutiones quas habent, sicut in Italia per suas*. This was then, and is now true. And the interpretation of those common laws in most places, save *England* and *Ireland*, hath of late time been much directed by the reason of the imperials, and only by the reason of them (not by their authority) and that also in case when they are not opposite at all to the common laws, but seem to agree with the law of nations or common reason. And this use of them, at the furthest, began in its youngest infancy, not c.d.l.x. years since. For before that, even from *Justinian's* time, they lay wholly out of use; having only that some pieces of them, with the interpolations of *Alaricus* and his chancellor *Anian*, together with *Lombardine* additions and interpretations, had their power in some parts of *Italy* and the empire. But for about n.c. years together, that is, from *Justinian* till *Frederick Barbarossa*, no profession was of them in any university, no doctorship, no other degree taken in them. But after that time, they grew into a common profession in this western world (although by their own authority they are confined to *Rome*, *Constantinople*, and *Berytus*) and even here in *England*, were, about *Henry* the third's time, often applied to the common

³ Videis dist. 12. c. 12. & 13. & extr. de novi operis nuntiatione c. 2.

² Ad consuet. Brit. tit. 22. de successibilibus, ad rubricam.

³ Vide Choppin. du domaine, liv. 2. tit. 15. §. 5. Bodin de rep. lib. 1. cap. 8. Suarez ubi supra, &c. Philip. 11. in pragmatice ante collect. legum regum.

⁴ Parli. 1. Jacobi I. cap. 48.

⁵ Parli. 6. Jacobi IV. cap. 29.

⁶ Vide extr. tit. de privileg. c. 12. super specula, & ibid. Hostiens. J. Andr. Anton. de Berno.

⁷ Item Choppin. du domaine, liv. 2. tit. 15. §. 5. Bodin de repub. lib. 1. cap. 8. & ante alios Suarez de legibus, lib. 1. cap. 8. vide etiam praefat. ad statut. Poloniar. Prusili.

⁸ Hieronym. G. 22. tract. de crim. laesae majest. lib. 1. quael. 13. §. 18. & 19.

⁹ In compend. theolog. citatur in notis ad Fortis. pag. 43.

¹⁰ Videis Suarez de legibus lib. 3. cap. 8. §. 3.

¹¹ Vide Choppin. du domaine, &c. liv. 2. tit. 15. §. 5. Bodin de rep. lib. 1. cap. 8. Suarez ubi supra, &c. Philip. 11. in pragmatice ante collect. legum regum.

¹² Parli. 1. Jacobi I. cap. 48.

¹³ Parli. 6. Jacobi IV. cap. 29.

¹⁴ Vide extr. tit. de privileg. c. 12. super specula, & ibid. Hostiens. J. Andr. Anton. de Berno.

¹⁵ Item Choppin. du domaine, liv. 2. tit. 15. §. 5. Bodin de repub. lib. 1. cap. 8. & ante alios Suarez de legibus, lib. 1. cap. 8. vide etiam praefat. ad statut. Poloniar. Prusili.

¹⁶ Hieronym. G. 22. tract. de crim. laesae majest. lib. 1. quael. 13. §. 18. & 19.

¹⁷ In compend. theolog. citatur in notis ad Fortis. pag. 43.

law in discourse and argument, as you may see in *Bracton* his frequent quotations of them. And heretofore some texts of them have been in our courts cited; not only as at this day sometimes is done (when the words only of some of the *regulæ juris* is brought into an argument) but the title and law, after the civilians fashion, hath been remembered at the bar, and so afterward expressed in the report, as I have seen in an example or two in the mss. years of *Edward* the 2^d second. Yet, notwithstanding that, it is clear, that *England* was never governed by the civil (or imperial) law, as it was also affirmed by the upper house of parliament in 11 *Rich. II.* where the king and lords protested also, that their meaning was, it never should be governed by it.

Of the VIII. chapter.

OUT of this fullness of laws that were made for tythes in *England*, let it be considered, by such as enquire here *de jure*, what interest was of right settled in the clergy by them (howsoever they were little obeyed) and by what authority made, (we have carefully added still what might help to a judgment in that also) and how extensive, in regard of persons and territory, they were; and some such other; and how far the tythes might be, after such laws detained, or made subject to customs, or possessed as things of common use. The laws of before, as well as of after, the *Norman* conquest, as it is vulgarly called, are here gathered, and are perhaps equally observable, as the rest, in the consequence of a general consecration of tythes to the church in *England*. For neither were the laws formerly made, abolished by that conquest, although, by law of 1st war, regularly all rights and laws of the place conquered, be wholly subject to the conqueror's will. For in this of the *Norman*, not only the conqueror's will was not declared, that the former laws should be abrogated (and until such declaration, laws remain in force, by the opinion of some, in all conquests of christians against christians) but also the ancient and former laws of the kingdom were confirmed by him. For in his fourth year, by the advice of his baronage, he summoned to *London*, omnes nobiles sapientes & lege sua eruditos, ut eorum leges & consuetudines audiret, as the words are of the book of *Litchfield*, and afterward confirmed them, as is further also related in 1st *Roger of Hoveden*. Those *lege sua eruditi* were common lawyers of that time, as *Godric* and *Alfric* were then also, who are spoken of in the book of *Abingdon*, to be legibus patriæ optime instituti, quibus tanta secularium facundia & praeceptorum memoria eventorum inerat, ut ceteri circumquaque facile eorum sententiam, ratam fuisse, quam edicerent, approbarent. And these two, and divers other

common lawyers, then lived in the abbey of *Abingdon*, quorum collationi nemo sapiens, says the author, refragabatur, quibus rem ecclesiæ publicam tuentibus ejus oblocutores elingues fiebant. You must know, that in those days, every monk here in *England*, that would, might remain so secular, that he might get money for himself, purchase, or receive by descent to his own use. And therefore it was fit enough for practising lawyers to live in monasteries. But what had those *praeceptorum memoria eventorum* (that is, reports and adjudged cases of the *Saxon* times) availed in their skill, if the former laws had not continued? More obvious testimonies to this purpose are had out of *Gervase of Tilbury*, *Ingulphus*, and others, and we here omit them. But also, indeed, it was not to be reputed a conquest, or an acquisition by right of war (which might have destroyed the former laws) so much as a violent recovering of the kingdom out of the hands of rebels, which withstood the duke's pretence of a lawful title, claimed by the Confessor's adoption, or designation of him for his successor; his nearness of blood on the mother's side not a little also aiding such a pretence to a crown. For the Confessor's mother *Emma*, was sister to *Richard* the second, duke of *Normandy*, to whom, *William* was grandchild and heir. But these were only specious titles, and perhaps, examined curiously, neither of them were at that time enough. And howsoever his conscience so moved him at his death, that he professed he had got *England* only by blood and the sword, yet also by express declaration in some of his patents, he before pretended his right from the Confessor's gift.

In ore gladii, saith he, regnum adeptus sum Anglorum, devicto Haraldo rege, cum suis complicitibus, qui mihi regnum cum providentia Dei destinatum & beneficio concessionis Domini & cognati mei gloriosi regis Edwardi concessum conati sunt auferre &c. And the stories commonly tell us, that the Confessor successionem Angliæ ei dedit. And although *Harold* also pretended a devise of the kingdom to himself, made by the Confessor in extremis, and urged also that the custom of *England* had been, from the time of *Augustine's* coming hither, donationem quam in ultimo fine quis fecerit, eam ratam haberi; and that the former gift to the *Norman* and his own oath for establishment of it were not of force, because they were made absque generali senatus & populi conventu & edito; yet for his own part he was driven to put all upon the fortune of the field, and so lost it. And the *Norman* with his sword and pretence of the sufficiency and precedence of the gift made to himself, got the crown, as if he had been a lawful successor to the Confessor, and not an universal conqueror. All this is plain out of the stories, and justified infallibly by that of the titles of many common persons made to their

¹ In bibloth. inter. Templi.

² Hicoman. illi. quæst. 5.

³ In bibl. Cotton.

⁴ Chart. eccles. Westm. in infest. part. 7.

⁵ Gual. Præf. five quis alius sit. in bibl. Cotton.

⁶ Paris in Hen. III. pag. 1257. edit. London.

⁷ Vide Quintilian, lib. 5.

⁸ Calvin's ca. 7, fol. 17, b.

⁹ Vide fiti Coke præfat. ad Relat. 3. & 8.

¹⁰ Ed. IV. membr. 16.

¹¹ Malinesb. lib. 3.

¹² Institution. cap. 10.

¹³ In Hen. II. pag. 147.

¹⁴ & si placet not. ad Forfic. pag. 7, & 8.

¹⁵ Ms. lib. 2.

¹⁶ Hist. Carol. Me. five quis alius sit.

¹⁷ Ms. lib. 2.

¹⁸ Ms. lib. 2.

¹⁹ Ms. lib. 2.

²⁰ Ms. lib. 2.

²¹ Ms. lib. 2.

possessions in *England* after his kingdom settled, upon the possession of themselves or their ancestors in time of the *Saxon* kings, especially of the Confessor. But this was always in case where they, by whose possession the title was made, had not incurred forfeiture by rebellion: Many such titles are clearly allowed in the book of *Domesday*, written in the Conqueror's time. One especially is noted by the most learned *Camden* in his *Norfolk*: that, as I remember, is touched in *Domesday* also, but enough others are dispersed there which agree with it. How could such titles have held if he had made an absolute conquest of *England*, wherein an universal acquisition of all had been to the conqueror, and no title could have been derived but only from or under him? More might be brought to clear this; but we add here only the judicious assertion of a great lawyer of *Edward* the third's time. *Le conquerour* (saith he) *ne vient pas pur ostoir eux que avoient droiturell possession mes de ouster eux que de leur tort avoient occupie ascun terre en desheritance del roy & son corone*. It was spoken upon an objection made in a *quo warranto*, against the abbot of *Peterborough*, touching a charter of king *Edgar*, which the king's counsel would have had void, because, by the conquest, all franchises, they said, were devolved to the crown. But, by the way, for that of his nearness of blood, which could not but aid his other pretended title; let it not seem merely vain, in regard of his being a bastard. There was good pretence for the help of that defect also. For, although the laws of this kingdom, and, I think, of all other civil states at this day, exclude bastards, without a subsequent legitimation, from inheritance; yet by the old laws used by his ancestors and countrymen, that is, by those of *Norway*, a prince's son gotten on a concubine, bond or free, was equally inheritable as any other born in wedlock; which was, I believe, no small reason why he stood at first so much for the laws of *Norway* to have been generally received in this kingdom. And some stories also, which make mention of duke *Robert* his getting *William* on that *Arlet* or *Arlec*, as she is sometimes written, say, that she was to him a good while *vice uxoris*. So *Henry* of *Knighton* abbot of *Leicester*: *Transiens, saith he, Robertus aliquando per Phaleriam urbem Normanniae, vidit puellam Arlec nomine, pellaris filiam inter caeteras in chorea tripudiantem, nocte sequente illam sibi conjunxit, quam vice uxoris aliquandiu tenuit, Willielmum ex egeneravit*. And he tells us also, the common tale of tearing her smock. If she were so his concubine or *viceconjux* (between whom and a wife even the old imperials make no other difference but honour and dignity; and by them also some kind of inheritance is allowed to such bastards as are *naturales liberi*, that is, gotten on concubines) it was much more reasonable

that her son should be reputed as legitimate, than that the son of every single woman bond or free, whether concubine or no, should be so, as those laws of *Norway* allow. And when he had inherited his dukedom, he made, doubtless, no question but that his blood was as good in regard of all other inheritances that might by any colour be derived through it; and therefore *William* of *Malmesbury* well styles him *proxime consanguineus* also to the Confessor, as he was indeed on the mother's side; and those of the posterity of *Edward* son to *Ironsides*, were then so excluded or neglected that their nearness on the father's side could not prevent him. You may see the common stories of them. But whereas that excellent lawyer *Littleton* says, that *William* the conqueror was called a bastard because he was before marriage had between his father and mother, and that after he was born they were married; (which indeed by the imperials, and by the general law of France, would have made him wholly legitimate) I doubt he had but little or no ground to justify it. Had he been so legitimate, it is not likely he should have been styled so commonly and antiently *bastardus*, which name even in his own charters he sometimes used with *cognomento*, as also the bastards of the old *Philip* duke of *Burgundy* were wont to do; although of later time it be reputed as a name of dishonour; and the *actio injuriarum*, or an action upon the case, lies wherever it be falsely objected, as some will have it. But these things prove enough that this *William* seized the crown of *England*, not as conquered, but by pretence of gift or adoption, aided and confirmed by nearness of blood; and so the *Saxon* laws, formerly in force, could not but continue. And such of them as are now abrogated, were not at all abrogated by his conquest, but either by the parliament or ordinances of his time, and of his successors, or else by non-usage or contrary custom.

The laws that are here gathered are for the most part *Latin*, *Saxon*, or *French*. The *Saxon* is interpreted by the old *Latin*, but the *Latin* and *French* are left only in their own words. I presume, scarce any man that with the least care studies the subject, will confess he understands not the context of such *Latin*. And the *French* translated not, especially because it is but the same which is in our old year-books and statutes, and may indeed even as soon be understood by any fit reader of the rest, as I could have translated it. And I think the judicious searcher desires rather the original tongue, whatever it be, than a translation. Therefore I suppose (if he have not studied the laws, or otherwise know it) he will rather take some minutes pains than blame me for not turning it; And howsoever to divers peevish ignorants, out of their dainty stomachs, and pretence of nothing but the more polished literature, it may here seem barbarous and distastful; the truth is, it was the plain and ge-

¹ Sharde in cas. in itin. temp. Ed. III. fol. 143. b.

Cotton.

² ff. de legat. 3. l. item legat. §. 4.

de gest. reg. lib. 2. fol. 62.

³ 18 Ed. IV. fol. 30. 2.

de domaine du Fr. traité du bastardié, chap. 9. &c.

de libetis natural. cap. 12.

⁴ Vide Roger de Hoved. in Rich. 1. fol. 415. & 147.

⁵ Authent. Rip. c. 12. discretis ignor. &c.

⁶ C. tit. de nat. lib. c. cum 10. &c.

⁷ Apud Camden. in Richmondia.

⁸ Videtis Pont. Heuerum

⁹ In bibl.

¹⁰ Videtis Malmesb.

¹¹ Videtis Baquet

¹² Videtis Pont. Heuerum

nine *French* of elder time spoken in the *English* court, and now loathed only by such as know not at all how to judge of it, nor understand the original whence it came to be, and remain so with us. I remember that, old *father Gregory of Neocæsarea*, whom they call *Thaumaturgus*, speaking of the old imperials of *Rome*, as they were in their *Latin* (which both then was, and now is a most accurate and polite phrase) commends them, for that they were indeed in an admirable and stately language, and in such a one as fitted an imperial greatness, *εὐφρανὲν δὲ τοὺς ἰσχυροὺς, εἶπεν ἡμεῖς, γὰρ ἐν τῇ τοιαύτῃ ἐκράβηται καὶ τὸ κράτος.* And so he says, he was ever driven to think of it; yet in his youth he was put to study them at *Berytus*, and was taught *Latin* to that purpose. If to so great a man that curious language could seem no pleasanter, when he studied it, it is the less wonder that the law *French* (which doth as truly and fully deliver the matter in our laws, as the *Latin* in the imperials; though indeed far from polite expression) should be so contemptible among the many petty ignorants, which usually despise whatever their lazy course of studies hath not furnished them withal, and most indifferently censure things only as they see them present, without regard to the cause or original of them, which made them that they were first inevitable, and afterward remained, not without exceeding difficulty, if at all, alterable. But this by the way.

Of the IX. X. XI. XII. XIII. and XIV. chapters.

UPON the discovery of the original of our parishies, of the antient and late practice of tything here, of arbitrary consecrations of tythes made by the laity, of the first settling of parochial right to tythes in *England*, of appropriations, of exemptions, of inclosures, and the antient jurisdiction of tythes (all which take up these vi chapters) no fit reader can be so blind as not to see necessary and new assertions, and consequents to be made out of them in every inquiry, that tends to a full knowledge of the true and original nature of tythes, as they are possessed or detained by either lay or clergyman, in respect only of any humane positive law or civil title. But we should here briefly admonish somewhat of our appropriated or consecrated tythes, and conclude all with a touch of the canon laws antient authority, which in practice made such alteration in *England*, as is shewed, about the year MCC.

To the matter of consecrations and appropriations here, apply what is admonished touching them in the review of the vi chapter. And let every man first carefully look, that he know the course of old appropriations, and the way how the monasteries and colleges came by them, before he conclude rashly of the tythes that are possessed through them. Tythes consecrated and appropriated, were purposely de-

dedicated to the Almighty and his service, although not without mixture of superstition; that we are sure of. But although a tythe generally were due to the evangelical priest *jure divino*, without any civil title, yet we are nothing sure that all or the most appropriated or consecrated tythes are the self same tythes so due; which is yet supposed as clear, and never further thought on by such as have troubled themselves and their readers with arguments for the church, in the point of appropriations. Let him that shall now write of them, see here the way how to consider them; and let him that that detains them, and believes them not due *jure divino*, think of the antient dedications of them made to holy uses; and however they were abused to superstition, as the other large endowments of the church, before the reformation; yet follows it not, without further consideration, that therefore, although so dedicated, they might be prophaned to common uses and lay hands. Consult herein with divines. But I doubt not, but that every good man wishes that at our dissolution of monasteries, both the lands and impropriated tythes and churches possessed by them (that is, things sacred to the service of God, although abused by such as had them) had been bestowed rather for the advancement of the church, to a better maintenance of the labouring and deserving ministry, to the fostering of good arts, relief of the poor, and other such good uses, as might retain in them, for the benefit of the church or commonwealth, a character of the wishes of those who first with devotion dedicated them (as in some other countries^e upon the reformation was religiously done) than conferred with such a prodigal dispensation, as it happened, on those who stood ready to devour what was sanctified, and have (in no small number) since found such inheritances thence derived to them, but as *Sejus* his horse, or the gold of *Tholuse*. But I abstain from censure, and add here by the way, a complaint made to the parliament not long after the dissolution, touching the abuse that followed in the church, through laymens possessing of appropriated churches and tythes. It deserves to be seriously thought on by every layman that now enjoys any of them, especially where divine service is not carefully provided for. *Ye that be lords and burgeses of parliament house* (so are^h words of it) *I require of you in the name of all my poor brethren that are English men, and members of Christ's body, that ye consider well (as ye will answer before the face of almighty God in the day of judgment) this abuse, and see it amended. Whan an antichrist of Rome, durst openly without any viser walk up and down thorow out England, he had so great favor ther, and his children had such crafty wits (for the children of this world are wiser in their generation than the children of light) that they had not only almost gotten all the best lands of England into their hands, but also the moost part of all the best benefices both of parsonages*

^f In panegyric ad Originem.

^g Christoph. Binder, de bonis ecclesiae in ducat. Wittenberg, pag. 94. &c.

^e Ex libello

dicto, the complaint of Roderick More, sometime a grey friar, &c. olim impress. Genovæ.

and vicarages, which were for the most part all impropred to them (the impropriations held by them were much more than one third of all the parish churches in England divided into three parts) and when they had the giftes of any not impropred, they gave them unto their friends, of the which alwayes some were learned, for the monks found of their friends children at schole. And though they were not learned, yet they kept hospitalitie, and helped their poor friender. And if the parsonage were impropred, the monks were bound to deal almesse to the pore, and to keepe hospitalitie, as the writings of the giftes of such parsonages and lands do plainly declare in these words, in p^uram elemosynam. And as touching the almesse that they delt, and the hospitalitie that they kept, every man knoweth, that many thousands were well received of them, and might have been better, if they had not had so many grete mens horse to fede, and had not bene overcharged with such idle gentlemen, as were never out of the abbaies. And if they had any vicarage in their hands, they set in sometime some sufficient vicar (though it were but seldom) to preach and to teach. But now that all the abbaies, with their lands, goods, and impropred parsonages, be in temporal mens hands; I do not here tell that one half penie worth of almes or any other profit cometh unto the people of those parishes. Your pretence of putting down abbeys, was to amend that was amiss in them. It was farr amiss, that a great part of the lands of the abbeys (which were given to bring up learned men that might be preachers, to keepe hospitalitie, and to give almesse to the poore) should be spent upon a few superstitious monks, which gave not xl. pound in almesse, when they should have given cc. It was amiss, that the monks should have parsonages in their hands, and deal but the xx part thereof to the poore, and preached but ones in a yeer to them that paid the tythes of the parsonages. It was amiss, that they scarcely among xx set not one sufficient vicar to preach, for the tythes that they received. But se now how it that was amiss is amended, for all the godly pretence. It is amended even as the devil amended his dames legge (as it is in the proverb) when he should have set it right, he bracke it quite in pieces. The monks gave to little almesse, and set unable persons many times in their benefices. But now, where xx pound was geven yerely to the poore, in more than in c places in Ingeland, is not one meales meat given. This is a * feare amendement; Where they had always one or other vicar, that either preached, or hyred some to preach, now is there no vicar at all; but the former is vicar and parson altogether; and onely an old cast away monk or frere, which can scarcely say his matins, is hyred for xx or xxx shillings, meat and drink, yea in some places for meat and drink alone, without any wages. I know, and not I alone, but xx. m. moo know more than D vicarages and parsonages

thus well and gospelly served, after the new gospell of England. And so the author goes on with sharp admonitions to the laymen, that fed themselves fat with the tythes of such churches, while the souls of the parishioners suffered great famine for want of a fit pastor; that is, for want of fit maintenance for him, for without that, he is scarce to be hoped for.

But we conclude with that of the canon laws getting such force, and making such alteration in matter of tythes about the year m.cc. when through it, parochial payment became first to be performed here, or elsewhere, generally, and as of common right (where other titles prevented it not) and through it only; not through the antienter secular laws made here for tythes. For the suits for them in the spiritual courts either were all grounded upon the canons; or the common right of tythes was now supposed in the libel, as a known duty to the clergy, without secular law. It may soon be apprehended, that it was much less difficult about that time, than any other, for the popes and their canon laws to gain more obedience among subjects, and execute more authority over lay possessions, when also they so easily usurped power over supreme princes, which yielded to them. For no time ever was, wherein any of them more insolently bare themselves in the empire, never near so insolently in England, as in the continuing times next before and near about this change. And to all states the church of Rome now grew most formidable. Remember but the excommunication and correction suffered by Frederick Barbarossa, Henry VI. and other princes of the empire; and by our Henry II. and king John; the stories of them are obvious. And our Richard I. between those two, to gratify the clergy here for their exceeding liberality, in contribution to his ransom from captivity, with great favour gave them an indulgent charter¹ of their liberties; which being joined with those other prone and yielding admussions of the ecclesiastick government over the crown (so were the times) doubtless gave no small authority to the exercise of the canon law in those things, which before about that time were diversly otherwise. Neither was that part of the canon law, which would have a general and parochial payment of tythes, not only second to any, in regard of the clergy's profit; but also none other, doubtless, was so great as it, in gaining the clergy a direct and certain revenue. Therefore it was not without reason on their side, at such time as they saw the power of Rome, that is, the authority of decretals and of the canons, grow most dreadful to prince and subject, that they should urge this on to a continuing practice, and that with execution of the reigning censures of the church. Hence have the canons, in this point, hitherto here continued, and have been and are binding ecclesiastick laws, saving wherein the later exprefs laws of the kingdom cross them. And thus out of the quality of the time, with regard to

* *Exat.*¹ Apud Innocent. III. epist. decretal. lib. 2. pag. 242. edit. Colon.

the practised insolvency of the pope and his clergy, in putting their canons and decretals in execution, that received general practice of parochial payment (near almost according to the canons) and other such alterations, that suddenly varied from former use, and from the liberty of the lay subject, must have its original; not from any want of the canons of the church of *Rome*, as if they had not been here at all had, or read, before about that time. For doubtless, the canon laws were here used and practised as far forth, as the clergy could make the laity subject to them. For, above 9 years before this alteration, good testimony is of the publick and solemn receiving of the *codex canonum vetus ecclesie Romanae* (mentioned by old popes¹ for the eldest and most authentick body of the canon law of the western church) and that in a national synod held in D.C.LXX. under *Theodore* and *Wilfrid* archbishops; where, with one voice, the clergy answered *Theodore*; *Optime omnibus placet quaecunque definierunt sanctorum canonum patrum, nos quoque omnes alacri animo libenter servare; Quibus statim* (says *Theodore*) *protuli eundem librum canonum, &c.* But at that time there was no law for tythes, or mention of them in the known canon law of the church of *Rome*, or in any other provincial canons, saying in that of the second synod of *Narbon*. Afterward also, we find the *leges episcopales*,² which were severd by *William I.* from the hundred, and confined to the bishops consistory; that we may omit the national or provincial constitutions of this kingdom, made in those elder times, according to the old canons of the church of *Rome*. And x years before *Gratian's* decree written, it is certain, that the canons of the church, generally by the name of *canones* and *canonum decreta* (for divers collections were of them, and some also confirmed by papal authority, beside the *codex vetus*, before that of *Gratian*) were familiarly talked of and urged in that great³ controversy in the synod of *Winchester*, in the fourth year of king *Stephen*, touching the castles of *Newark*, *Salisbury*, and the *Vies*; where the king denied utterly, *cursum canonum pati*; that is, to have it determined by them, whether or no, the two bishops, *Roger of Salisbury*, and *Alexander of Lincoln*, might lawfully keep their castles that they had fortified. But while the rest of the bishops stood so much upon their canons, and even in the face of majesty professed a rebellion, the king, and the lay subjects, it seems, grew so exasperated against them, that by publick command, for preservation of the liberty of the crown and laity, they were forbidden to be of any more use in the kingdom. For so perhaps is that to be understood (as we have elsewhere⁴ noted) in *John of Chartres*,⁵ where he says, that, *tempore regis Stephani a regno jussu sunt leges Romanæ, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis assererat. Ne quis etiam libros retineret, editio regio*

prohibitum est. What he calls *leges Romanæ*, the most learned friar *Bacon*, mentioning the same story, styles *leges Italianæ*, and takes them for the *Roman* imperials, and not for the canon law. I confess, I see not enough clearly here to judge (upon the words of *John of Chartres*) whether it were the canons or the imperials. On the one side, if we say, he meant that *Theobald* or his clergy, brought the *Roman* canon law; it might so seem, as if it had not been here before in the hands of the clergy, nor partly practised by them. Which doubtless is otherwise. If, on the other side, we understand the imperials (copies of which indeed might well be at that very time brought as a novelty hither; for they were then newly found; and plainly in *Henry II.*'s time, they were here in the hands of the more curious scholars, as you may see by *John of Chartres* his citing of them) how then is that true, which he presently after says, of the increasing power and force of those *leges Romanæ*? *Sed*, saith he, *Deo faciente eo, magis virtus legis invaluit, quo eam amplius nitabatur impietas infirmare*. What force or power at all had the imperials here afterward? Where is any sign of it? But the objection, against that which might prove them not to have been the canon laws, may not difficultly perhaps be answered. It is true, that the canons of *Rome* were here before, and read, and partly practised in the church. But divers collections were of them about this age of king *Stephen*, and perhaps some later and larger collection might be brought hither by archbishop *Theobald*, or some of his clergy, which are understood, I think, in that *domus venerabilis patris Theobaldi*. He himself perhaps might bring *Ivo's* decree (when he came from *Rome* in 3 of king *Stephen*) and endeavour the strict practice of it here; (which the king and the lay subject had reason enough to dislike) or some of his clergy might perhaps afterward bring in *Gratian's* decree, that was both compiled by *Gratian*, and confirmed by pope *Eugenius III.* about ten years before *Theobald's* death, that is, about 16 of king *Stephen*: and this way those words of *legis virtus invaluit*, may have their truth. For however that opposition against the canon law were, it is most certain that this first part of the body of it (the decree) was presently, upon the first publication of it, in use in *England*, and familiarly cited by such divines as talked of what had reference to it. Witness especially⁶ *Giraldus Cambrensis* in his epistles, and the practice of the canon law here, for the time of *Henry II.* is seen in the epistles of that *John of Chartres*; which yet remain and are, I think, the antientest examples of proceedings in our spiritual courts. But notwithstanding that first part of the body of the canon law, which expressly commanded tythes to be generally paid, were here soon received among the clergy; yet about 1 years after that, the former course of arbitrary consecrations of them continued. And both that and the rest of those courses in dispo-

¹ Diff. 19. c. 1. si Romanorum, diff. 20. c. de libellis.

² G. Malmesb. hist. novell. lib. 2. pag. 103. b.

³ De nugis curialium, lib. 8. cap. 22.

⁴ Bede hist. eccles. lib. 4. cap. 5.

⁵ Jan. Ang. lib. 2. §. 43. vide e. si placet, not. ad Fortesc. pag. 43. & 44.

⁶ In symbol. elect. mss. in bibl. Cot.

⁷ Vide cap. 14. §. 1.

sition of church revenues, which so differ from the canons, and from the practice of this day, was not fully altered till some decretals came hither with more powerful and dreadful authority (as the times were) of some of the following popes, especially of *Alexander III.* and *Innocent III.* which two alone, I think, sent as many commanding decretals into every province, as all their predecessors had before done; and especially into *England*, as is already shewed, they sent divers (only for the matter of tythes) which were all first of papal authority, for the particular ends for which they were sent, and so were obeyed as canon law, although none of them became parts of the general canon law, until *Gregory IX.* put some of them into his decretals, authorized by him in the year MCC.XXX. about which time, perhaps, and divers years before, the canon law of *Rome* was not only read here privately among the clergy, but professed also in schools appropriated

to it; So I guess is that close writ of 19 *Hen. III.* to be understood, which prohibited the holding of *scholae legum* in *London*. It was directed to the mayor and sheriffs, commanding them, ^q *Quod per totam civitatem London clamari faciant & firmiter prohiberi, ne aliquis scholas regens de legibus in eadem civitate, de caetero ibidem leges doceat. Et si aliquis ibidem fuerit hujusmodi scholas regens, ipsum sine dilacione cessare faciat. T. rege apud Basing. xi die Decembris.* This was five years after the decretals published; and, it seems, most probable, that these *leges* were canon laws, perhaps mixed (as usually they were) in the profession also with the imperials (for both of them were, it seems, studied here under *Henry III.* by the clergy, more than other part of learning) and therefore were forbidden, as being both, in regard of their own authority, against the supreme majesty and independency of the crown of *England*.

^q Claus. 19. Hen. III. membr. 22.

^r Videtur 19 Hen. III. apud Manth. Paris hist. major. a. d. 1255.



A N
ADMONITION

T O T H E

Reader of Sir *James Sempil's* APPENDIX.

8 L

NOTION

NOTION

T O T H E
R E A D E R
O F
Sir James Sempil's
A P P E N D I X,

For so much as concerns *Scaliger* and *Selden*.

IF I must call it by a name, it shall be an *admonition*; for had Sir *James* but in *words* answered any thing I had objected, I would have called it a *reply*; or if he had to the purpose objected against what I had written, I had named it an *answer*; he doing neither, I could use neither of these names.

Whence I have so ill deserved, *reader*, of this Sir *James*, a man, that (till this occasion) I never had heard of, that he should thus chuse my name, to oppose it; I as little know, as how I have so well deserved of him, that he should say so little, or indeed nothing at all against me. For so far clear is he from *proving* any thing against those two or three pages of mine, which he meddled with, that I dare confidently justify (as I presently shew) that he hath scarce at all barely *spoken* what so much as *verbally* crosses any part of them. And indeed, you see in his own conclusion of his *appendix*, after he hath spent some leaves in offering at what he found in my *history*, he yet becomes so judicious, as to tell you; that my *history*, and his *simple judgment* (as his words are) *de jure*, may stand together. But why then doth he promise in his title, the *answering of objections found in Scaliger and me*, unless because the Stationers and their boys, for vent of the book; might thence assure their customers, that the *History of Tythes*, is now utterly confuted? But the sum of all that Sir *James* would prove, is, that *tythes should have been paid otherwise*, than I, out of infallible testimony, have delivered that they were paid. What if he could prove that they *should have been paid otherwise*? What is *that to me*, or *Scaliger*? Neither of us ever made *that* our question; we have both related what was in *practice*. Neither of us (being both *laymen*)

were so bold, as to instruct the *clergy*, what should be done in a matter of *divinity*. My title is *history* only, so are the three parts of it, so is every line of the whole. Now to offer to disprove any thing in my *history*, must be either by shewing, that I have *false* quotations, or that I *falsely* relate the *words*, or *sense*, of my authors, or that I have omitted *testimonies* for other sides, that are of *better* credit. But Sir *James* ventures not on any of these, and he abstains warily; for I know, as well as I know my own name, that though the most learned that lives, search me, and that with the curiousest censure, yet he shall not find the least offence that way committed by me. I know so, and am secure of it, however *detraction* may wrong me; and I would gladly, that they which speak contrary of me to others, should but put on the ability to design out to my self any such offence through the whole work.

I shall willingly learn, if they teach me, and can as easily neglect them, while their whisperings injure me. But they are few enough that can judge here; and for Sir *James*, he hath ingenuously shewed himself a man not at all conversant in those who should furnish him to judge of what he offers to find fault with. For all that he *seems* to oppose me in, (for he only *seems* to do so) is, either about the *tythes of Abraham*, or of the *Jews*. He that talks of *Abraham's* tything, without aid of the *antients*, must trust only to his own, and new fancies. I tell my *readers*, what the *fathers*, and *rabbins* have of it, but Sir *James* deals not with *them*; where he speaks of it; and he that will teach the *practice* of the *Jews* in *tything* (let the right be what it will) without the authority of the *body* of the *Jewish* canon law (that is, the

* *Append. p. 54.*

talmud) and of the *Jewish doctors* or *rabbins*, is in meer darkness. For holy scripture hath not left memory enough of *practice*, but of *precept* only; and to prefer a bare *conjecture* of what the *Jews* did in *Jewry*, before their own express *testimony*, is, as if we should believe, that the *Jews* in *Germany* did, as Sir *James* at *London* might only fancy them to do, rather than as they themselves should thence relate to us. But he hath made new *interpretations* of scripture, and thence would he prove, that the *Jews* did this or that, because forsooth (as he thinketh) they *should* have done so. What lo-gick is this? It should have been so, *ergo* it was. I could so prove, that Sir *James* hath not written the greatest part of his *appendix*. Thus should my argument be. Sir *James* should have abstained from meddling with the divine *Scaliger* and me, (I know that is granted by enough already, and by them that loved him) *ergo* he did abstain. Strange things might be thus proved. Nay, thus it is plain also, that there is no sacrilege, and so his whole *treatise* falls to be against *nothing*, for, to keep the *form* of argument, there ought to be no sacrilege, *ergo*, there is none.

The sum of all that Sir *James* would offer against me, is included in *this* kind of argument, saving where he charges me with such passages, as I never wrote or dreamed of, as you shall see in the particulars. To be brief, Sir *James* hath written what he *thinks*, and I what I *know*; he what *should* have been, and what now *should* be, and as he *thinks* too; I what *hath* been in use and practice, and that as I *know* too, as well as the choicest *testimonies* of *Jews*, *Gentiles*, and *Christians* for all ages could instruct me. But perpetual shame be to *them* (if any such there be) that have abused any part of my discovered and constant *truth* to a *sacri-legious* end. We come to the *appendix*, where he begins with me and *Scaliger* in *pag.* 20.

§. I. He finds fault with *Scaliger*, because he saith, that *tythes* are only considered, as they are paid by the labourers, or husbandmen, not as paid by the *Levites* to the priests. And then he tell us, that *Scaliger* should have altered his *title* (which is general, ^b of *tythes* in the law of God) and made it, ^c of *tythes* paid by the labourer, because in the law of God, there is a *tythe* of a *tythe*, paid also by the *Levite*.

I would not willingly have been in his case, that in *Scaliger's* lifetime, thus should have offered to correct him, and I owe that great name so much in that I have learned from his incomparable works, that being thus joined with me, I ought to justify him.

Who sees not, that what the ^d *Levites* paid, was an hundred part, not a tenth or *tythe* (which is all one word) of the yearly increase? And what doth the words of *tythe* of a *tythe* denote, other than an hundredth part? Why then is *Scaliger's* title faulty? He perfectly knew

(as every man must, that can but number) that a *tythe*, as a tenth part only, of that whence it was originally divided, was paid only by the husbandman. He clearly knew it, and therefore he wrote it.

§. II. ^e He tells you that *Scaliger* will have the poor man's *tythe*, all one with the first, and that I will have it all one with the second. No such matter, Sir *James*. ^f (of my self) will have it neither the one, nor the other. I only tell my reader, what the *Jewish practice* was in this poor man's *tythe*; and that I confirm by the express testimonies of the body of the *Jewish canon law*, and those three most eminent rabbins, *Jarchi*, *Ben Maimon*, and *Mikotzi*; which all agree in this particular, that the poor man's *tythe*, and the second *tythe*, differ in the years and place only of payment, not at all in substance, and that in the year when the poor man's *tythe* was paid, no second *tythe* was at all paid. The testimonies of these *Jewish* monuments furnished me with all that I have delivered, and there was never any learned man that yet doubted but they were most certain and infallible in relating to us the practice of that nation, however they be full of toys and ridiculous fancies for matter of divinity. For I take it not to be a question of divinity, whether *tythes* were paid thus or thus.

§. III. ^g But, saith he, as I have herein Selden against *Scaliger*, so (I hope) scripture against both. Not a word of scripture against either I assure you. What piece of scripture hath he offered? What can he offer to prove the practice otherwise than I have faithfully related? But in his treatise he bringeth scripture, and by new interpretations of his own, would prove, that it should have been otherwise. Here again is the logic I told you of. It should have been otherwise, *ergo*, it was otherwise. And methinks, he that had so critically found fault with *Scaliger's* title, should have been wary to have here observed also mine, that is prefixed to my chapter of the *Jews* *tythes*, which he speaketh of. The words of it are. How among the *Jews* *tythes* were paid, or thought due. And all my title is convertible with that chapter, as my whole book is with the name of history. Now unless Sir *James* conclude one of these two; either that they were not thus paid, as I relate, or that they were not held thus due amongst the *Jews*; he talks only of me, but nothing at all against me. No man that hath sense, but sees this. And for *Scaliger's* differing from me, I confess, the words of his published copy differ herein from me; and that published copy hath deceived ^h others, that are very learned, while they transcribed it. But I dare swear, however it fell from his pen, it was no more possible, that it could come from his judgment, than that so divine and learned a brain, should understand ⁱ them in Hebrew to signify the first; For he took that *distributive* of his, from the *Jewish* lawyers, and from the same that I

^b De decimis in lege Dei.

^c Bulling. ca. diatrib. 3. alii.

^d De decimis a solo colono pendendis.

^e It should be thence, in Hebrew, second.

^f Num. xviii. 6. 16.

^g Pag. ead.

^h Pag. ead.

used, and he professeth as much in the beginning; and in them the *poor man's tythe* is always instead of the *second*, and questionless such an error or oversight only, had not escaped, if he himself had published it; But we know it was not printed till after his death, and that carelessly at *Frankfort* first; neither is it without divers faults of the print, especially in the *Hebrew* words; And in another place it is plain too, that *secunda* is for *prima*, as¹ Sir James hath well observed. Neither durst I call it an error in *Scaliger*,² I only said, that *by his leave it could not be so*; And every one of the learned, that are able to look in the *Jewish* doctors, will I know agree with me, unless they will also deny they saw this light. So clear is all that I have therein spoken; and for what *should* have been, or for interpretation of *Scripture*, my title had no more to do with them, than Sir James hath indeed to do with me.

§. IV. He saith, 'that *Scaliger*, in citing of *Tobit* 7. is against his own grounds. Why? Because the *tythes* there spoken of, are paid to the *priests*, or the sons of *Aaron*. Before he can prove that this is at all against *Scaliger's own grounds*, he must shew that *Scaliger* did take that to be the true reading of *Tobit*; but plainly *Scaliger* did take the best reading there to be, the sons of *Levi*, as the best edition of *Rome*, and the best *Hebrew* copies have it expressly; neither doth the old *Latin Tobit*, St. *Jerom* turned out of *Chaldee*, speak here of *Aaron*. And where then is Sir James's exception against *Scaliger*? See the next section.

§. V. He correcteth *Scaliger* and *Selden*, because they ^m will not (as his words are) have the *priests* to receive any *tythes* immediately from the *laicks*. We never told him that we would not have them do so, but we are sure that they did not receive any from *laicks*. But let him that will, believe Sir James here. He offers *Tobit* against us; if we deny him that word, *Aaron*, there his argument is at an end, and at the best he uses here his own fancy and conjecture only, against the express testimony of the *Jewish* canon law, which was received by their doctors from certain tradition, much antienter than Sir James can prove that *Tobit* was written. Beside, for the *Greek Tobit*, I refer you both to *Bellarmino* and *Reynolds*, where you shall see it by both valued as of the least authority: Neither do the *Jews* acknowledge that book for any authority amongst them; and the *Latin Tobit* (as I have admonished) which St. *Jerom* turned out of *Chaldee*, hath not a Word here to help Sir James; and this satisfies that he strives to wring by meer conjecture, upon uncertainties out of *Tobit*, against our infallible testimonies of known credit. For the rest that Sir James uses out of the ⁿ chronicles here, I refer it to your judgment, reader, look upon the place first.

§. VI. He finds fault with *Scaliger* for quoting those texts of *Deuteronomy* and *Leviticus*

to such purpose as he hath done. *Scaliger* took all (as ^p is already told you) from the *Jewish* doctors, and for his particulars cites these parts also of the old testament, as those doctors do, thence came it that he gave these quotations; as every man, that is able, may soon see in *Ben-Maimon* especially, and in *Mikotzi*, if he search these places which I have cited out of them. *Scaliger* was not so bold as to innovate former interpretations, but he faithfully delivered what he found in their commentaries, as his purpose was. Neither doth Sir James here find fault with *Scaliger*, but with the *Synagogues* of the *Jews*, and teacheth them a new way to interpret. What is that to *Scaliger*?

§. VII. He ^q sees no coherence, or analogy from scripture for what I cite out of *Jarchi*. It is all one to me, whether he do or no; his quarrel is here with *Jarchi*, then not with me, for I cited it to let you know, that *Jarchi* (that is, the author of the ordinary gloss in *Hebrew*) said so, not to interpret scripture my self, which is no part my history.

§. VIII. He denies that the first tythe was carried to *Jerusalem*, because it was without precept, and impossible. Indeed for the impossibility it were a good proof against us; if it were impossible, then certainly it was not in practice; and if you believe, reader, that Sir James hath proved it impossible, you may at your pleasure agree to the consequent. But *Scaliger* and I know, that the *Jews* (who should somewhat better know their own practice than Sir James) agree in it, that it was carried all to *Jerusalem*, and thence dispensed. Let who that will, dispute with them about the impossibility of it; it is plain that it was possible, but for being without precept, what is that to *Scaliger*, or me? Must we so often remember that we talk of practice not of precept?

§. IX. At the end of this page, he saith, we hold that the first tythe was only due to the inferior Levites. Where did either of us speak of their being due so? We say only it was thus and thus paid, and that we are sure of; and for the duty, I preserve my opinion till I be asked.

§. X. If, saith he, *Selden's* meaning be, wholly to frustrate the priests of any portion in tythes inheritance; then, consider what was said of this, part. 7. cap. 5. §. 2. I pray, reader, consider it well, and see what will come out of it. I know not why Sir James doubts here of my meaning; one meaning only I had, to tell that truth which I saw none had collected, and I had no quarrel to frustrate them of tythes inheritance, as he calls it, a name that I thank him for. Never till now did I ever hear of a *Jewish* tythe distinguished by that name, but for the matter see before, §. 4. 5. & 7.

§. XI. Out of *Numbers*, c. xlvii. and *Josephus*, he would prove again, that *Aaron* and the priests had of that tythe inheritance, that is, of the first tythe. For the text out of *Numbers*, because it meddles not with the practice,

¹ Append. p. 21.

² Append. p. 21.

³ Append. p. 24.

⁴ Hist. of tythes, cap. 2. §. 3.

⁵ Supra, §. 3.

⁶ Append. eod. 2.

⁷ Append. p. 22.

⁸ Append. p. 21.

⁹ Append. ibid.

¹⁰ Append. ibid.

¹¹ Append. ibid.

¹² Append. p. 27, 28.

¹³ Append. p. 27, 28.

but only shews the *precept*, I warily say nothing to it, though it were small difficulty to answer his *objections* taken from it; but I touch nothing here but *practice*; and for that in *Josephus*, clearly it was spoken of the *tythe of the tythe*; But he thinks not, why so? For three reasons; First, because *Josephus* was not then at Jerusalem. Secondly, because he was no *high priest*. And thirdly, because he never read that name of *tythes alone*, for the *tythe of the tythe*. For the first reason; What was that to the matter, though *Josephus* was not then at Jerusalem? No man doubts but that the twenty four courses of the priests, and their families, lived variously dispersed, yet the *tythes of the tythes* were communicated to them from Jerusalem, as by others also, besides *Josephus* in his life, it appears they were. For the second reason. I never heard before that the *high priest* had the *tythes of the tythes*. Plainly *Josephus* was a *priest*, and that was enough, but more of that presently in the thirteenth section. And for the third reason, that he never read the word *tythes* for *tythes of tythes*. I make no question but that was spoken with this resolution, that wherever the word *tythe* alone did occur, it should be interpreted for some other *tythe*, and not for the *tythe of tythe*, and so long as Sir *James* is in this opinion, he may reasonably securely say, that the word is never used. But what makes that to the matter, when all he saith is but his own conjecture? On the other side, that I have delivered, is from such clear and express testimonies, as plainly tell us what *Josephus* meant, while they so teach us the *practice*; and clearly in regard of the *priest's* receiving the *tythe* from the *Levites* without reference to the *husbandman*; it is a *tythe* only and properly to be so called, though it be one hundred in regard of the *husbandman*, as in §. vi. But did the *priests* receive a *tythe*, and pay also a *tythe* of it to themselves?

§. XII. * Yet master Selden would prove, from this same place of Paul, that *priests* were not partners in these first *tythes*. Not I, I assure you, I never went about to prove any such thing, I only tell you in the place Sir *James* quoteth, that from the certainty of the *husbandman's* not paying any immediately to the *priests*, that holy passage is interpreted, and that by the most learned *Drusus* in his *præterita*; he knew from the *Hebrew* doctors, and thence interpreted it.

§. XIII. * But what if this decima decimarum, saith Sir *James*, were not properly, and primo due to the *priests*, as Mr. Selden seemeth to avouch; but to the *high priest*. It is strange I should be so often charged with what I not so much as once talked of. Where do I talk of their being due, or not being due? But I am sure it was paid to them in general, and not only to the *high priests*; that is clear both by the *Hebrew* doctors which I have cited; and * *Philo* and *Josephus*, being both *Jews*, expressly tell us, that the *Levites* gave the *tenth* of their *tythe* to the *priests* generally. I wonder still

that Sir *James* will offer his new conjectures against such infallible certainties, that are with one consent of ancient writers agreed upon. For indeed in this he offers a proof, but to no purpose, that it was otherwise than I had noted in the eleventh section.

§. XIV. What I offered out of *fathers* and *rabbins*, touching *Abraham's* being a *priest*,^b Sir *James* acknowledgeth, but minces it with a distinction. Let him talk as he pleaseth, I would fain know what *Jew*, or ancient *father* he could shew me, that expresseth any kind of *priesthood* before the law, that was noted with the privilege of *primogeniture*; And for his distinction, I confess I no more understand it, than I do why he should tell us, that *Abraham* was no *priest* in *privilegiis primogeniturae*. What privilege of *primogeniture* wanted *Abraham*? But all this page, I will wonder at it, and in courtesy leave it.

§. XV. For that of *Tobit*, remember that *Scaliger* and I bring not *Tobit* for our proof; But *Tobit's* text, at the best being doubtful; we clear all by the *talmud*, and the *Hebrew* doctors, and thence interpret *Tobit* by them. And for the authority of *Tobit* against us, remember what I said in the fourth and fifth sections. But why doth Sir *James* conceive here, that the *Tobit* translated out of *Chaldee* by St. *Jerom*, telleth us expressly, that he gave the *poor man's tythe* only *tertio anno*, and there is no such matter as a *third tythe*. Here then is the question, whether Sir *James's* fancy alone upon an uncertain text, that may be as easily interpreted literally against him, or the general express consent of the *Hebrew* doctors, that best knew their own practice, shall be preferred? And for his offering to prove that it should have been otherwise, that is nothing to *Scaliger* and me; we dispute no such question.

§. XVI. Against *Joseph* and *Tobit*,^c saith he, Selden bringeth but *targum* and *talmud*: Major uter? *Targum* & *talmud*? Where do I against *Joseph* and *Tobit* once mention the *targum* and the *talmud*, both which Sir *James* stileth as if they were writers names. But let that pass. I never doubted but that *Josephus* and *Tobit* agreed in sense, though not in so plain words with the *talmud*; and for the text cited out of *Josephus*, I deny it, that it should be translated by joined to these, but by beside these. So that *Josephus* in the form of his division made this *tythe* a third kind (which was a fault in the fashion of division only) but never understood that the other two were paid that *third year* also. The clear and express testimonies which we have brought for it, make it manifest; And for that major uter, who is the greater? Why, who think you is the greater for the certainty of the practised law in England? Are our *year-books*, or *Hollinghead*, or *Polydore Virgil*? It is the same question. Ask somebody that you dare credit, and that can judge of the *talmud*, and see if they say not so. I wonder how that came into Sir *James's* mind here. But for the *targum*. The *targum* was never mentioned by

* Append. p. 26.

† L. 8. p. 337.

‡ Append. p. 26.

§ Lib. de hon. sacerdot.

|| Append. p. 27. & 30.

¶ Append. p. 27.

‡ Append. p. 28.

§ Append. p. 29.

me, or thought on to this purpose; and this clearly fatistich for all that he hath further here, touching this so plainly, mis-called *third tythe*; which howsoever Sir *James* hoped, he hath fully justified against *Scaliger* and me, he must yet know, that until he confutes the *Hebrew* doctors, and the text of the *talmud*, what I have said, remains firm and unshaken.

§. XVII. He deals with me alone, and would 'prove that the *second and third are not one*. I have only thus related them to be *one*, that is, whenever the *one* was paid, the *other* was not, and the *poor man's*, or *third tythe* (as some have called it) was paid instead of the *second*. The same authority, which I have spoken of so often, gave me this too, and he that will believe Sir *James's* arguments against them, shall rest so instructed without my envy.

§. XVIII. ^a He talks as if I had used his *papers*, or seen them. I vow by this greatest name that witnesseth all truth, I never 'till within these few days, heard either of his name, or ever heard or read of any thing that he hath written, nor did I ever see a line of his, 'till at the time of the imprinting.

§. XIX. ^b But whereas *Selden*, faith he, *taxeth all of ignorance that have not used Scaliger's help*. Is it possible Sir *James* should thus charge me, when some ten lines before, himself cites my words which are thus. ^c *How sufficiently among us others do, that slothfully and ignorantly, without his help, &c.* Is this a *taxing* of all of ignorance? If it be, I understand not English.

§. XX. If we, ^d said he, *had all used Scaliger's help, we had been all still in ignorance*. If we had relied indeed upon what only slipped from the pen of that divine wit, we had *still been in ignorance*, as is noted in the third section; but plainly he that useth *Scaliger's* help, shall be by him directed. His words are, that the chief reason why writers erred in expressing the *practice* of *tything* among the *Jews*, was, *quod veteres juris Judaici interpretes in consilium non adhibuerunt*. Had Sir *James* from thence took advice, and learned from the *Hebrew* lawyers, he had not questionless offered thus at *Scaliger* and me.

§. XXI. ^e Now we are to hear Mr. *Selden's* opinion in disposing of this *third tythe*. Sir *James* never heard or read any opinion of mine, touching this matter, unless he will call an *historical* narration upon other men's credits, an *opinion*. And for what he hath here of *Tobit* and *Josephus* is before satisfied in §. XVI. And though he say it ten thousand times over, that *Tobit* and *Josephus*, are *contrary*, I deny it utterly; and though they were, that were nothing against the *talmud*, and the consent of so many *Hebrew* doctors. I appeal to the learned here.

§. XXII. Surely ^f faith he, *I cannot well construe this section, in course of true divinity*. Perhaps he cannot, and why should he go about it? It was not written by me for *divinity*, but

for *history*; therefore if he had said he could not construe it in *physick* neither, I had agreed with him. But for the *servings* and *starving* at once; why, the *first tythe* that was paid every year would keep them from *starving* I trust, so there is no such fear.

§. XXIII. ^g But if *Selden* mean, faith he, *that the feasts ceased also each third year*. I wonder he should doubt whether I mean so or no, I could mean nothing else; so he understood those *feasts* at *Jerusalem*, wherein the *second tythe* was spent.

§. XXIV. What is here meant by division, I know not, ^h faith Sir *James*. Why then I am ready to tell him what I meant by it. As the *second tythe* was divided from the *annual increase*, next after the first in two years, so was the *poor man's tythe* in the third year; and in that example which I shew to explain the *practice*, it is plain, that in the division of the *second tythe*, and of the *poor man's tythe*, the same number, that is, 531 is the divided part. This is meant by *division* there, and I wonder that any man should not apprehend it.

§. XXV. The persons differ in both *tythes*, ⁱ faith he. Did I say, that all the persons that eat of the *one*, eat also of the *other*? I only tell you, that the *Levites* were partakers of both, and therein they agree in the persons, and that plainly justified my words.

§. XXVI. And is not that, ^j faith he, enough? That is, the place. I did never think that the place only was enough to make a real or essential difference; but however, my saying they were *one*, is but (as I express it also) that the *one* always being paid, according to the variety of years, the *other* ceased. That is as clear as the sun's light is not clearer, I appeal to all those rabbins, and the canon laws, the received practice of the *Jews*.

§. XXVII. May not *Tobit*, half a bible book, ^k faith he, as well, yea better justify my division agreeing with all the *Hebrew* texts that we have, as the *septuagints*, a contrary, who are held but translators even of *Tobit*? No doubtless, Sir. Of that testimony out of *Tobit*, enough has been said in §. IV. and V. and for your *Hebrew* text or *Tobit* either, I deny still, that any of them prove the practice to differ from what I have delivered. But are the *septuagints* held the translators of *Tobit*? First, they that hold so, must prove that *Tobit* was a book among the *Jews* in the time of the *septuagint*. Clearly that they cannot do, neither doth any ancient authority discover any such fancy; and when all is done, the *septuagint* were *Hebrews*, and have express words there, that agree with the other *Hebrew* doctors, and therefore confirm them.

§. XXVIII. But how shall we know this, ^l faith he, that their *Hebrew* copies did bear the words so? We must either know so, or else we must say we know that they did not understand *Hebrew*. And the learned know, that in many

^f Append. p. 32.

^g Append. ibid.

^h Append. ibid.

ⁱ Append. p. 30, & 31.

^j Append. ibid.

^k Append. p. 33.

^l Append. p. 31.

^m Append. p. 31.

ⁿ Append. ibid.

^o Review C. 2.

^p Append. ibid.

^q Append. p. 31.

^r Append. ibid.

passages their copies clearly were sometimes otherwise than are received texts. Any man that reads St. *Jerom*, shall find it so.

§. XXIX. *Shall we rely rather, * faith he, upon their unknown copies, than the authentick received text?* By no means; I rely not upon them; but when I see such a number of old infallible testimonies, agreeing with what they there have varying from the true original, I cannot but think, that their translation is as great a light for farther confirmation, as those testimonies are for the sense, though not for the words, of their translation. He that judgeth here, must know the nature of that translation, and frequent variance, and easy change of Hebrew characters. Who knows not those things must be silent. By the way, I note here that that place is so turned in the ancient Arabick translation of the *Pentateuch*, that it exactly agrees with the Hebrew, as we now have it. That translation, with the most part of the old testament, besides very many good Arabick manuscripts, is in the hands of that most truly noble lord, and ever to be by me honoured, the earl of *Arundel*; Neither did I ever doubt of the truth of the text; I was not so bold with holy writ.

§. XXX. *Why did they not also either conform Tobie's text to it in reading, or reconcile them by commenting?* I will tell you why. Because, they never saw *Tobie*, for ought can by any probability be proved; neither was that book (as I have already told you) ever received by the Jews as authentical, and the *septuagint* were Jews. Why then should they, nay how then could they, conform it?

§. XXXI. *The frequency should have been shewed, * faith he, by some few, specially in the very word in question.* Indeed, I had shewn examples, if I had thought any man would have questioned so known a truth of grammar. He that searcheth *Gen. xxiv. 14, 16,* and *Gen. xlix. 20,* and *Exod. xxii. 31,* and *Habbakuk i. 16.* shall see examples of this masculine joined with a feminine, and divers other are obvious. And for the word *hamaigher*, what is that to the purpose, though there be no examples of that very word, so it be a property of the tongue.

§. XXXII. He † tells you, *that I intend to judge nothing.* Yes indeed did I intend to judge, that is, to judge of my testimonies for history, and those I have so judged of, that I cannot find them at all subject to his reprehension.

§. XXXIII. Mr. *Selden*, ‡ faith he, hath given us *historiam*, as he found it recorded yet, *haec ipsa historia non est vera.* Are we now agreed then? I have given you a true history, as I have found it, but that that was recorded (so he means I think) is not true. That is only proved by Sir *James's* words, but I think that he confirms all that I say, to be truly related. I desire no more, neither was my part other than that.

§. XXXIV. § *Consilis inimica tuis, historia, fallax.*

I confess now indeed, that *historia*, is fallax; for *historia* hath here so deceived Sir *James*, that he hath made a false verse by it; could no body that saw it, admonish him of that unlucky profody.

§. XXXV. ¶ Mr. *Selden*, faith he, *will here have nothing tythed but spoils.* I never said so, or wrote so, I only tell you who said so.

§. XXXVI. * He talks of two authorities only, brought for the tythes of spoils only. I am sure I have related no less than seven, and those of note and antient; and for Sir *James's* interpretation, I have nothing to do to examine that. And methinks he might as well let me alone in delivering other men's interpretations; I left room enough for his howsoever.

XXXVII. † To tythe only spoils with Mr. *Selden.* Not with me, Sir, but with the fathers; I have given you the testimonies both ways; that only was my part.

§. XXXVIII. But if seemeth, faith *Selden* well, (so are Sir *James's* words) that for this payment of herbs, the Pharisees were of the truer side, from Luke and Matthew allowed by Christ. A strange fortune, that Sir *James* should pick out this one passage to commend me for, which another (who I hear hath mountains of paper that are with child against me) takes to be a character of my want of christianity; as if I had qualified an express testimony of our Saviour, with, it seemeth; I hope Sir *James* will help to defend me here: But I would have that other know (who in excepting against me, either discovers that he understands not English, or else is led by meer malice) that I inserted these two words, it seemeth, upon most wary considerations, and out of reverence to holy writ. The paragraph where that is, is short, and the sum of it is, that the Jews generally held that leeks were never tythable by the precept; yet did the Pharisees tythe leeks, as understanding that they ought to do so by the precept, or that it was by a settled custom only, or tradition in their self, that expressly appears not. Our Saviour says, they ought not omit it, I make no question, because he said so, but that they ought not. But whether he said they ought not, in regard of the precept, or in regard only of their custom or tradition, I durst not be so bold as to judge. Therefore I said only, it seemeth they were of the truer side, which must needs have reference to what goes before; that is, the true or false understanding of the precept, not at all to that, whether they ought to do it, or no. Nay, the words are so far from being too qualified, that admit our Saviour had reference only to a custom or tradition among the Pharisees, then they were not indeed of the truer side in their interpretation of the precept; and so on that very text in St. *Matthew*, faith the most learned *Drusus*, hoc faciebant ex traditione, sive ex disciplina majorum, non ex lege. If that were clear, then were it as clear, that the Pharisees were not of the truer side; and until now, I never heard

* Append. p. 33.
Append. p. 35.

* Append. p. 33.
Append. p. 36.

* Append. p. 34.
Append. p. 36.

* Append. p. 34.
Append. p. 37.

* Append. p. 34.
Append. p. 40.

that

that a reverend abstaining from too bold interpretation of holy writ, was thought to be a character of want of christianity. But doubt not but the mountains of his will bring forth more such mice.

§. XXXIX. ¹ Here now is proved our historia fallax, by Mr. Selden's own consent. Why so I wonder? The sum of his reasons is in these words a little after. *It is, faith he, no sure course of arguing the true intent of precept, by the sinister extent of practice.*

Who doth argue so? It is his logic that argues, not my history; and I have not argued any thing, for what I know; I tell you plainly, the practice of the Jews. Do I once infer by argument this or that of practice, out of that practice? And why doth he say, the proofs from the talmud are held erroneous, because the precept should have been understood otherwise? Here is the logic I told you of, again.

§. XL. ² History of all times confirmeth this, for bay, &c. have been subject to tything, as Selden hath observed. Not I, Sir, I never observed any thing from history of all times. Why do you tell me so, or where do you find it in me? Neither do I know any such history.

§. XLI. ³ He comes to opinions which I have related, but in speaking of them, he deals only with the authors of those opinions. Again, unless he can shew, that I have not faithfully related those opinions, he toucheth not me, and that he doth not offer to do, neither finds he me of any of these opinions.

§. XLII. ⁴ How kingdoms are by their own laws positive, settled in tythes, is one thing; and how they should be, another thing. I marry Sir. Had Sir James seriously thought of this in time, he had been thence instructed, that it was to no purpose to impugn me or Scaliger. Here he tells himself how we write one thing, and he using our names, writes against another. We write of what was in use settled, he what (he thinks) should have been. Why could he not have done so, and let us alone?

§. XLIII. ⁵ No man ever durst offer a proof for it. Yes indeed, some durst; Besides the disputations of the question of tythes, in the schoolmen, you may see for that, Armachanus's defensoria curatorium.

§. XLIV. ⁶ I am sorry Mr. Selden did not as amply historify the reasons drawn from it, as he hath done for the first ground, being but weak; and that he gave not also his own verdict of it. He hath little reason to be sorry for it. The reasons were common and accurately handled in whole treatises every where to be had. Should I have stuffed my history with other men's large disputations of divinity? I was summarily to relate, not to discuss opinions; And for my own verdict, I have not yet learned that it is the part of him that writes an history, to give his verdict of what he relates. And for that passage of Adam's tything, I refer it to you, reader; believe that Adam paid tythes, if you will. I

gave it only to shew historically the practice of the professors touching tything; and I did never look to hear that any judgment would have thought it to have been of better credit, than I there suppose it to be.

§. XLV. ⁷ He ^m says, my judgment was suspected, touching the right of tythes. Alas! What is my judgment in such a point of divinity? Or why should it be suspected? Perhaps I was never sufficiently satisfied in that point but doubted only as many do. When I have cause, I will tell what I think of it, but not in an history.

§. XLVI. ⁸ He says, that Adam's and Abel's tything is very probable. He shews you also his reasons; if you think they hold, believe him, I will not dissuade you; But for my observation out of Tertullian, and the septuagint touching Cain's dividing, what is that to tythes? Or who hath interpreted this place so amongst the antients?

§. XLVII. ⁹ Here he takes advice of me out of the review. But all that he answers to my question is nothing to me. I only advise there by the way, that this were fit to be thought on, and I see that he thinks on it.

§. XLVIII. ¹⁰ The Levites, ^v he faith, paid only to Aaron, not to Aaron's sons, as we have proved. Whether that be proved or no, see §. V. and VIII.

§. XLIX. ¹¹ For who will think that the truth of divine precept must rely upon knowledge of fact? Have I said that I think so? I only admonish that it must be known to him that considers of the precept, and that also it must be sought for from the interpreters, or former times. Whether it be fit to seek rather in a man's own brain for it, I refer it to you, reader.

§. L. ¹² But to bring in talmud, targum, and gemara, to teach us, from what they say was done, what should be done by the law, it is, (in my judgment) quite out of square. It is indeed; but have I any where brought them to teach what should have been done? And where have I the least inference that way out of any of them? And for gemara, while he divides it a third with the other two, I know no other gemara, than that that is one part of the talmud, but he names them as if they were two authors. And for the credit of the talmud there in matter of fact, I refer it, and appeal to him that can judge of it. Without the talmud, how had we known the fashion or practice in the celebration of the passover? How should we apprehend many other things occurring in holy writ, which are thence opened also by the divine Scaliger, and the learned Drusius.

§. LI. ¹³ Facts truly recorded, do not always argue laws truly executed, else the two high priests at Christ's time, must be good in law, because true in fact. Again, have I ever said that they do? Nay, do I not often say the contrary in the christian times? And for the two high priests, I know learned men enough, that

¹ Append. p. 40.

² Append. p. 42.

³ Append. p. 51.

⁴ Append. ibid.

⁵ Ex ms. Oxon.

⁶ Append. p. 51.

⁷ Append. p. 41.

⁸ Append. p. 40.

⁹ Append. ibid.

¹⁰ Append. ibid.

¹¹ Append. p. 49. & 50.

¹² Append. p. 54.

¹³ Append. p. 41.

¹⁴ Append. p. 51.

understand the *lawfulness* of them to be nothing discordant to scripture, so it be *rightfully* conceived how they were *high priests*. But that is not to our purpose.

§. LIII. *Least* [†] saith he, *the incurious reader, by too hot hunting the wild history, might defraud Jacob, that is, the promises, and gospel, of their due primogeniture in the right of tythes.* Perpetual shame be on that man whoever he be, that by meddling with my *unfortunate history of tythes*, takes any occasion to defraud the church of any right. But as Sir *James* hath written his *appendix*, as he says, *least the incurious reader might defraud Jacob*; so have I also offered this *admonition*, *least Jacob*, that is here, Sir *James* (for so he [†] saith, he proves to be *Jacob*) should defraud me of any reputation of faith in that which I collected. I stand for nothing else

here, neither have I, nor will I touch upon any argument of his made for the *jus divinum*, neither have I in this *admonition* given any occasion of any such argument; and it were a great error in me if I should, for it is a meer matter of divinity; And for the matter of ^{*} *twins* applied to him and me, here I confess it is a kind of expression as much beyond my fancy, as it is to conceive that my *history* hath a *beel*, or as it were, a *beel*, as his *elegancy* calls it. And plainly he *caught* it by the *head* rather, for all that he offers to speak against it, is only in two or three leaves in the first and second chapters. Why these should be more like a *beel* in my *history*, than they are to a whole *foot*, I understand not, but what a *wild history* is, I as little know, as what a *tame appendix* might be.

[†] Append. p. 54.

^{*} Ibid.

^{*} Ibid.



A /
R E P L Y

T O

Dr. *Tillesley's* Animadversions upon the History
of TYTHES.



T O T H E
R E A D E R
O F
Dr. TILLESLEY'S
A N I M A D V E R S I O N S
On the History of Tythes.

Something doubtless you look for, reader, in reply to this hot and busy doctor: and something you have here that shortly satisfies all, but his unmannerly fits of language. Neither he, nor the rest of them that publicly rave at me, can infect me with that disease. Only thus much I learn of them; That all mad men are not in *Bedlam*; those that are there, I pity; some other that are not, I laugh at; and I know how to value barking at moonshine. But now to his *animadversions*.

His whole glory that he affects here, is grounded by him upon his telling you of an *acknowledgment* or *submission* made by me; of his *catalogue of authors*; of my *false quotations* (as he calls them); and of *ill-beseeming language*, beside his long and wrestled *arguments*. For his *arguments*, (if they persuade you to any thing against me) I shall not envy your error. I dare trust you with them, reader, so you read my history with them, and be able to judge. Both for my own safety, and charity, I must not here at large rip up every particular of that which you know at first so offended. But through his whole book remember still but these two things: That *præfice* is not to be proved out of *canons*. And withal, that you must distinguish the *times* which in his premises and conclusions he fraudulently every where confounds. And then you cannot but be able to look through all his poor fallacies, that have the character of no more providence in them, than as if they expected to be read by faith only, and not by understanding. But to doubt that you need be admonished of other of his frequent cavils to deceive you; (as when he proves *tythes* were due or paid, out of

an authority that talks only of *first fruits*; or when he would prove against me, that there was a passage of the right of tythes in a *general council*, before that of *Lateran*, because there was so in the old *capitularies* confirmed by the pope; and a world of such more) to doubt of your judgment in this kind of merely nonsense arguments, were to think you like the doctor. In the name of fraud, did he believe or hope that his reader should be so much an ignorant, as to take the word *primitiæ*, for *tythes*, or the *capitularies*, confirmed by popes, for *general councils*? But I should much anger the doctor without ill words, if I had but the same liberty to write and publish, as is allowed him. Yet for such things as are either expressly falsified by him in my text, or laid to my charge by him for falsifications, with some few other occurrences, I shall presently, according to the course of his work, admonish you.

For those other five things; the *acknowledgment*, I mean, the *discovery of my authorities*, the *catalogue*, and the *quotations*, and *language*, (which for the most part are personal betwixt him and me) briefly thus. For the first;

^a He tells you, *I made a submission in the court of high commission*. That I ever was present in that court, or called thither (as I live) it is more than I know. But I wonder not that the doctor should begin with playing false with you. It is common with him through the whole. I confess that I did most willingly acknowledge, not only before some *lords* of the *high commission* (not in the *high commission court*) but also to the lords of his majesty's privy council, that I was most sorry for the

^a Pref. pag. ult.

publishing of that history, because it had offended; and his majesty's most gracious favour towards me received that for satisfaction of the fault in so untimely printing it. And I profess still to all the world that I am sorry for it, and so should I have been, if I had published a most orthodox catchism, that had offended. But what is that to the ^b doctrinal consequences of it, which the doctor talketh of? Is there a syllable in it of less truth, because I was sorry for the publishing of it? Indeed perhaps by the doctor's logick there is. And just so might he prove that there is the more truth in his animadversions, because he was so glad of the printing of them. And besides, he hopes (as he ^c saith) that my submission hath cleared my judgment, touching the right of tythes. What dream made him hope so? There is not a word of tythes in that submission, more than the mentioning the title. Neither was my judgment at all in question, but my publishing it, and this the doctor knows too, as I am assured. For the submission he talks on, was through the favour of some of the lords (to whose noble regard towards me, I owe all service) given by me in writing in some six lines, lest by misreport of some such as the doctor is, I might be injured by false relation of what I should speak only; and copies of it I dispersed into many hands; and I know that the doctor hath seen one. In sum, I was, and am sorry that I published it, and that I so gave occasion to others to abuse my history, by their false application of some arguments. But there is not a passage in it, but that I ever did think, and now do think, to be most constant truth, as I have there delivered it.

Now for ^d the faithful discovery of my authorities, which he dares talk of: I know not well, reader, what he means by faithful discovery. But what if it fall out now, that there were near 100 several volumes, out of which my chiefest testimonies were taken, any of which, or any copies of them, were never seen, inside or outside, by the doctor? Will you believe then that he hath faithfully discovered them? I durst venture no less pledge than my life on it, that I could make it manifest to be so. Nay, what if I used divers also, of which the doctor understands not one line at all? I doubt I could make that too manifest, for his credit also. Yet he tells you (as if he talks of ^e himself) that there are that can trace my footsteps. For ought he knows, there are; but, for so much as I know, he is none of them. And yet, charitably to have helped the doctor here, when I first heard of his book ready to be licensed, having never had any acquaintance with him, I wished one of his printer's men to tell him from me, that there was not a book either of my own, or of my friends, which I had used in that history, but should, at his pleasure, be ready for his use, that he might be the better furnished to strike home to me. I am not sure, whether the message were delivered or no; but

I protest from my heart, he should have had them, and I profess so much yet to any man, that hopes for a discovery of any false authority cited by me; so clearly secure am I of mine own faith, in what I have performed. For his catalogue, see but presently what I note to it, and then judge for he have there one other author that makes to his purpose, than such as I sufficiently had before either cited or designed to him. But for those few of my quotations that he says are false; I confess, that when I first read him, I was not so confident, but that some slip might have been in my hand, or in the printer's, especially when I saw a doctor tell me of false quotations. I spent therefore some half hour in a new search of them; the books being all by me. And if I may ever have any credit with you, reader, believe it, I found them all (which he saith are false) to exactly true, that unless somebody, (to abuse the doctor) had purposely torn out those places from the books, or blotted them, I cannot at all guess why he had not as well said, all through my history had been false, as any of those which he talks of. I have the authors by me, and he that can but find that I am not able to shew him every one of them, as I have noted them together to the sixth animadversion of the fourth chapter, and according as they are used in my history, shall have for his pains all the books in my study. I shall be glad to see the doctor, or any man else venture, so to get them of me.

For my ill-befitting language (as he ^f calls it) which he musters up in four lines in his preface. I did not think it ill-befitting, nor do I yet think it so. And I know there are, and ever were, some that deserved it. Yet if there were none such, when I wrote it, I see there may be one now to challenge it: and I begin to doubt that it was a prophecy for the doctor.

To conclude here, reader; However mine have offended, yet I beseech you but to think of this question seriously. Whether he that writes only a story to deduce out of former times any established practice of the whole church of christendom, according to what is exactly settled in our own state and laws; or he that dares thus to write volumes, to make innovation against the ancient positive laws of our own state, and of all other states of christendom, be the greater offender? If I make it not appear, that I have done the first, and the doctor the second, I vow my self willingly to forfeit all opinion of faith and reputation.

On my preface his third animadversion.

He opposes my acknowledgment of that noble ^g knight's directions, to my denying that it was stolen from other mens notes. I appeal here to common sense and honesty. If taking directions be stealing, then hath the doctor stolen almost all his quotations from me. For I can plainly justify it, that he hath scarce a passage of moment, which he applies to his

^b Pref. pag. ult.

^c Epist. dedicat.

^d Ibid.

^e Pref. pag. ult.

^f Pref. pag. penult.

^g Sir Rob. Cotton.

end, that he hath not direction to (for matter of authority) in my margin.

In his sixth animadversion.

Whether the rabbins be needful here or no, I appeal to the learned. I wonder how the doctor could write that, especially for his own credit. And then he tells you, that from more skilful Hebricians I must be admonished that my quotations out of the rabbins are not all true. I would he himself would adventure to shew me which of them is false. Methinks, a doctor of divinity should either not have meddled with such a work, or should have ventured on the hardest part of it. I had thought so censorious a doctor could have advertised me himself of any thing, and not have turned it over to more skilful Hebricians. And he professes in the beginning of his book, that he had most intended to have placed his observations on those two chapters. If he had thought them within his strength, why had he not looked after those rabbins quotations? But why few of them of mine own observation? They were none of his, or of any man's like him, I warrant him. Indeed I have held acquaintance with some learned men which are that way very skilful; yet, I appeal to them all (for they all yet live) if there be one of them, from whom I received any of those observations. But whencesoever I had them, they are no meat, I see, for the doctor. It seems for all his divinity, he will not meddle here with the language of the holy text. And whereas he concludes here: That it is more than he knows that any writers have so erred in the Hospitalers, that is his ignorance. I know them, but I am not so like him, that I strive to traduce mens names, but instruct only in matter: And though I be a man, and may err, (as he says) here, yet he that sufficiently shews me colour that I have erred, must be of another manner of brain and learning than this doctor.

In his seventh animadversion.

Here he would have the omitting of national customs, as before the omitting of the rabbins.

Judge whether he seeks truth, that wishes omission of any thing that makes to the subject. For the credit of the cause, he might well have omitted this. And whether my comparison there be towards what is profane, I refer it to common understanding. As also whether it be sense to make argument of practice from command of canons, which are never, nor ever were obeyed in any state for matter of possessions, but only as the lay power in practice gave way to them. And indeed do but deny him that argument (as you must) and then all he offers at me falls wholly to the ground.

In his eighth animadversion.

For his stir he keeps about the tythes in London, there is nothing he brings, that opposes what I affirm out of Linwood, save only a false translation of his own; for rather than he will not cozen his reader, he translates, *praediorum sive gardenorum decimas*, by *praedial*

tythes and of gardens. But here, he tells you, that I say in pag. 163. that *praedial and personal tythes are equally due*. I have no such matter there or elsewhere; I only speak of the general maintenance of the church, and according to the school-men; not a word of the tenth part, as he claims it.

In his tenth animadversion.

I write, that I would not wish my history should gain any strength of truth from my name alone, but from my authorities cited. The doctor wonders I should wish so, and says, it shall not thence gain any with him. Yet himself some six lines before saith, he will trust upon my relation for ancient historians. It seems he wrote the one, when he had forgotten he had written the other. And that he said before, doubtless he inserted, when he found himself a most incompetent judge, or examiner, of my authorities.

In his twelfth animadversion.

I wonder he keeps such a stir here, and elsewhere, that I should acknowledge the jus divinum of tythes. Why, what is that to me in my subject? It may be, I am not persuaded to it. When he or any man else hath proved it to me, I will presently subscribe, and till then, under his favour, conceal my opinion.

In his thirteenth animadversion.

I did not conceive, but that not sufficient thinking of human laws, and the neglect of them might have denoted the same thing. This sure could not be written by him, but between sleeping and waking.

In his sixteenth animadversion.

He might very well have omitted his proofs, to make us believe that some archdeacons have been scholars, and so derive a stiffness of writing to himself. This might have been better omitted than either rabbins or national customs in my history. It had equally been pertinent, if he brought us examples of some good scholars called Richard, that so he might have proved that it were possible for him to be one.

His catalogue.

For his catalogue of authors: Remember that I divide the christian times quadrupartitely, with the latitude of twenty years, or thereabout, to every part of the division: And he takes into his catalogue the three parts of my four to make a great shew together, instead of substance. But I constantly affirm that he hath not one name of an author in his catalogue, that makes for my first 400 years, other than I have delivered; There is not colour in any, as he mentions them, but only in Irenaeus, which he most egregiously falsifies. The text of Irenaeus is expressly; *Dominus praecepit pro eo quod est decimare omnia quae sunt pauperibus dividere*; and so is decimate continued, and not divided, as he (to make imposture) hath offered it. Judge now, if this be fair dealing, and let common sense but judge, if that be not rather against tythes than for them; But clearly it proves nothing for the doctor,

neither shews it that I omitted any good testimony touching my subject. See the father himself, compare him with the doctor, and then wonder.

¹ For the rest till St. *Austin* (who falls according to my division in the beginning of the second 400 years) he hath not named any other authors that have colourable words for the right, than I have done in my fourth and fifth chapter. But you may observe that he takes even all he could find, did but name the word *tythes*: And he follows the common example of them which have their brains converted into their chosen conclusions, and then think every thing they meet withal, proves what they doze on.

In the rest that follow after St. *Austin*, there is scarce one author mentioned in him, that I have not cited to his hand; and I first shewed him very many of them; for divers of them are written, where he yet never came. And such as in the latter times I omitted, I expressly comprehend under the general name of the *great and common opinion* of their being due, citing the most eminent, and neglecting the rest.

But when he hath done, he tells you that *out of his few books, and small reading he hath collected them*. Certainly he might have had many more within those years. But amongst his few books here, ask his own quotations, if mine had not a special and great place? Without mine, he had misfed very many of his number, though I affected weight, but the doctor only number. And I could help him, I think, to as many more of that time, if such, as many of his are, will serve his palate.

On the third chapter.

Here he quarrels with the great *m Scaliger*, and me, about *Festus*, and he talks of *Scaliger*, just as a poor pigmy would have done of dead *Hercules*. I think confidently, as I did, still. And if he can shew me one ancient and classick author to justify himself here, I will yield to him. Till then I regard not his roving fancies.

On the fourth chapter.

² *Origen* is here falsified by him against me. The words go on after *præstat, ad primogenita asfert*. He durst not cite them to you for fear you should have presently answered, that this must of necessity be referred to the practice under the law. For did *Christians* use to offer their *first-born* to the clergy also? And I refer it to any able reader, whether it be not plain, that he hath not proved here otherwise than what I affirmed touching the use of payment of tythes. And what is it (I wonder) to the purpose that St. *Austin* *was born in the year 350*? He preached notwithstanding about 400, and then *maiores* falls well, as in my division. ³ And his proof *out of first-fruits*, is but the old haunt of error.

⁴ The number of the canon is forsooth *corrected from 66 to 7*; but the doctor must learn

that it is noted with that number in the *Greek* code whence I took it. See but how careful he is to *correct*, when he knows not at all *why*. And then he cavils at the name of *elders and wardens*, as if I meant (as he says) *puritan elders and church-wardens*. In the name of sense, why *puritan* here? as *puritan conceit* in another place of his book. Because *elder*, therefore *puritan elder*; and because *warden*, therefore *church-warden*? If I had talked of a doctor, must I have meant a *puritan doctor*? He did not, I hope, glance at me with his *puritan*. I was never yet (I trust) either mad enough, or foolish enough to deserve that name.

⁵ The *epistle of Pius* proves no more than *Urban's*; I am equally doubtful of both. Neither doth St. *Cyprian* help there at all against me, for I interpret him not to any such purpose as the doctor dreams I do. I have expressly supposed it of *personal* substance, that is, a tenth of such as the *all* was at the apostle's sect, that is of a *personal* estate or money taken for a fold patrimony, and so that father interprets himself too.

For the rest of his authorities; what have they to do with *Tertullian's* time, of which I speak? But it is one of the best cloaks that he useth, to confound times that are distinct.

⁶ He tells you, *those other quotations are unnecessary*. I am glad they were true though; and he that searches them, shall find them *necessary* enough for the matter to which I noted them, and not to the word. But this doctor hath such an itching humour to discredit my quotations, that he often ventures to tell you that which his own breast knows to be contrary, rather than he will lose the fame he had hoped for, through finding some false ones among them.

Seeing he makes it such a matter, and values it such a glory to tell you of *unnecessary and false quotations*; I could have wished I had had some such, that the doctor might not have lost his longing: I might have had enough *true*, to justify my *history*, and enough *false*, to have served the doctor's so affected *glory*. But he hopes you will believe him, that he hath found some to be *false*. And because here is the first meddling with my quotations, we will muster up his *exceptions* of that kind altogether; amongst which if any one be not blindly, and ignorantly, or else most falsely taken by him, I will give him all my books for his further instructions.

⁷ Next therefore he tells you, *there is no such matter as I cite the codex for*: yet the very express words are there, that speak what I have noted out of it. Either he knew not how to search the *codex*, or else he must out of necessity confess his purpose to abuse his reader. Ask any doctor at the commons, here, and then see what they will say of me or this doctor?

⁸ He says to my quotation of the council of *Toledo*; that *there is no such thing there*. I

¹ P. 1.
² P. 41.

³ P. 39.
⁴ P. 6. p. 41.

⁵ P. 32.
⁶ P. 39. 2m. 24.

⁷ P. 39.

⁸ Ibid.
⁹ P. 91. 2m. 24.

¹⁰ P. 42.

¹¹ P. 41.

¹² Ibid.

have looked again, and I beseech you, reader, do you so, I find there expressly what he denies me.

He saith, pag. 105, *animad.* 16. the quotation is *wholly mistook, being for jurisdiction, not tythes.* I turned to it again, and wiped mine eyes, and found it (as before) expressly for tythes. Ask for this too, good reader, at the commons. I appeal to those learned men in any particular, that touches their profession, as this doth. Yet whoever desires to satisfy his own eyes with any of these kind of things noted by this doctor, shall, at his pleasure, see his falshoods, by comparing the places in my little library.

He tells you, p. 110. *an.* 22. *no capitular is against any such challenge of offerings, yet oblatæ* are expressly spoken of in the same book, cap. 299, and to that sense which both he and I agree in. Yet see what an impudence concludes this? For here I can use no less word; *So that all my quotations in respect of tythes are false,* he tells you. First, those he speaks of there, have nothing to do with tythes at all. And next if this confident doctor that talks of *all my quotations* (and prints those words in another character) can prove but *one, any one* (that he thus meddles with) to be false, I am ready to forfeit him my liberty, or what else may be dearest to me; and there is not one he speaks of, that I am not most ready to shew or satisfy any man in, that desires to see them where originally they are. But the height of the doctor's ability herein is to confute compendiously (as he did of whom the tale goes) with *thou liest.* 'Tis short, I confess, and very easy.

He saith, p. 113, *an.* 25. the quotation of Ivo is false. I looked again in my Ivo, which is the first edition, and there I find it as I have quoted it, and that epistle is 95 in the second and last edition. Think you not, reader, that the doctor hath found a great fault here.

He saith, p. 120, *an.* 36. that *neither of the quotations mention or intend the claim of any spiritual patron.* But my passage there was quite out of his element. I speak of the use especially of France, which is known every where in their lawyers. And because those two first canons speak of *patrons*, I made the reference with *vide* only to them with the third, which expressly is of *spiritual patrons.* And yet my mannerly doctor will needs call it a *falshood.* But why had he not searched the next quotation to that very place? There he might have found 10 for 17, and so he would certainly, but that he knew not how to find the book. If he had, here had been a triumph for him.

Because *pertinet* is by chance for *pertinent*, I am taxed again, p. 139, *an.* 69. for *falsifying* Ivo. But whether it be one or the other, it makes no matter at all; and the doctor might in charity have thought that a letter might have slipped me or my printer, as well as a whole word either him or his printer in this very place. For *ab* you see, is wanting in his *animadversion*, yet I will not tell him by and by, of a *falshood.* I have no more reason to do so than he

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had. But further to satisfy this waywardness of the cavilling doctor, in the first edition of Ivo and the fairest, it is expressly *pertinet*, and not *pertinent*, as in the second.

He tells you, p. 169, *an.* 4. that *there is nothing of division of tythes in my quotation there.* I know there is express mention (and he cites it too) of the *division of the tenth* from the nine parts. There is no necessity, but that kind of *division* may be understood in that of *Egbert's.* I restrain not my quotation to any *special division*, but only that there is the first authority for *dividing before witnesses.* And clearly so it is, and those which the doctor brings here, have not a syllable of tythes.

P. 171. *an.* 5. Here is a quarrel poorly picked about *Ethelwerd.* I looked again in him, and I find still the beginning of king *Brithrick's* reign noted there. If that be not to my purpose, as I have used him, I know not common sense.

Pag. 204, *an.* 11. The quotation of pope Innocent's decretals, he saith, is false. If it be not exactly so in *Innocent*, as I have related it, or if there be a syllable in the barons claim touching *licence*, I will give the doctor, or any man else that shews it me, that whole volume of *Innocent*, which is not very common.

He dares tell you, p. 228, *an.* 3. of *two quotations being false.* But I am sure he quotes my words there most *fafully.* I talk not of *grants with confirmations*, as having reference together to those quotations. To the first I refer this, that the *grants of lay-men alone were disallowed.* To the second, that even *confirmations* also after such *grants became now of no strength.* I have looked those two most known canons over again, and if I have eyes, they are exactly as I have cited them. And I appeal here again to the professors of that law, or to any man, that can but read the text.

Besides these, I find not one false quotation imputed to me by the doctor. But what if *all* these had been false? I confess some negligence had been in me to have let them slipped so; yet nothing that I go to prove, had received any confutation by it, because I have abundance of other authorities to the same purpose.

In his seventh *animadversion.*

The doctor is rather deceived here, and with him *Pamelius*, and others, that so interpret *Sportulantes* in St. *Cyprian*, though indeed there be liberty for a man to use his own fancy in a word that scarce any where else occurs. I am of my former mind still, and that in *honore sportulantiū fratrum*, is being honoured by the brethren that by offerings made up their stipends.

In his eighth *animadversion.*

If *Sportula* of itself be a bribe in both those places, I would gladly know of the doctor, what *Sportula contradiçta* in the one is. Plainly *Sportula* is a bribe no otherwise than *donum* or *munus.*

In his eleventh *animadversion.*

He tells you, I forgot St. *Ambrose.* I appointed him for my next chapter, and there I have related his own words. And here he falsi-

fies my words, as if I had said, *that no tythes of such things were then thought of*. I say only in that place, *that the lawmakers in making their laws, thought not of any, which appears plainly*: And then what (in the name of sense) is that to St. Ambrose?

In his sixteenth animadversion.

For that of *Christmas* day, I refer it to any man, that can but read, whether St. Chrysostom do not expressly say, *that he learned it in the west*. If the doctor had told you, there had never been a St. Chrysostom, I could but have referred you to the books that mention him.

On the fifth chapter in his second animadversion.

For that of *Cassian*; I expressly write that, *he received them as a treasurer for the poor*; and the doctor also cites my words so, yet cavils that he did not do it as *abbot*. Why, good doctor, who says he did? Could you not as well here, as in other places, falsify my words, that so you might the better have found fault with them.

In his fourth animadversion.

He had no cause to doubt, *whether I took it at the second hand or no*. I never did so in any thing, but where I acknowledged it, and let the place be looked on, and you shall easily see, that all the wit he hath, cannot make my words in the least kind vary from it, although he cackles here with an untruth, and a great oversight.

In his tenth animadversion.

He tells you that *what I say is false, yet true, changing the time, and that to Caroloman*. If I can spell *Caroloman*, I expressly refer it to him in my passage, and thence collect the use of the time.

¹ If he have a syllable here for *infeodations of tythes* to be otherwise than I have related, I profess I cannot read. Yet to justify himself, he tells you, *I cross my self in that I cite an infeodation of tythes under Charles the bald*; whereas I expressly have cited it, for the *infeodation of a church, and lands only, and so are the words of it*.

In his eleventh animadversion.

He quarrels because I say *some doubt of St. Austin's homily*; he knows they do so, yet will not give me leave to say so. I tell him not, that I *doubt of it*, though I might well enough for ought he brings to justify it.

In his thirteenth animadversion.

Here he recites my words falsely, and then wrangles at them. Where do I say *they are no tythes*? And judge, good reader, if he do more, than trifle, whilst he talks of St. Jerom.

In his fifteenth animadversion.

For that of *Agobard*; unless he should persuade you that *sancti patres & synodi* could denote *provincial councils*, I confess, I understand not his cavil.

² He tells you of my *omitting such authorities as he hath given you in his catalogue*. I have omitted some of them indeed, for I see not one that he brings there, which makes to his purpose, otherwise than such as I name. And I tell my reader in general, in this part of

my division, that it was the *common opinion* of the time. But he had omitted many (by his own confession) if I had not first published them for him.

In his sixteenth animadversion.

Here also he tells you, *that I affirm that no council of Toledo mentions tythes*. But this was, because he might tell you of one that he knew that mentioned them. The truth being, I have no such word any where in my history.

Then he tells you, *that I cite the same addition out of the council of Orleans*. Whereas, I cite no such thing, nor had I any cause to think of it there. Is there never a word among them which he hath mustered up out of my preface that will serve for him here?

In his eighteenth animadversion.

He tells you that *I seem to confess that tythes were meant in the council of Gangra*. Whereas, I not only seem not to do so, but expressly have written the contrary.

In his nineteenth animadversion.

He quarrels at my difference betwixt *declaration by doctrine, and constitution by precept*. And unless he mean that every sermon he should preach upon the commandments, should be a *constitution* of his own, his words import no sense at all. And for that of *Agobardus*, I have cited the very words of him as he hath them.

In his twenty third animadversion.

He concludes, that *I could not bring a more important authority against myself*. It is a strange thing. I bring it to prove that tythes were paid in that church, and I express so, nay he affirms that too, yet this *authority, forsooth, is against myself*. Unless you think it unmanly to ask him, what he cannot tell you; do so much as ask him, what he meant here?

In his twenty seventh animadversion.

It is hard to please the doctor I see. For if I cite two quotations that he looks after, he commonly denies me one of them, and tells you there is *no such thing*, and, I pray you, believe him as he deserves. Now I cite here but one only, to shew you of what nature the subjection to the bishop was; he will needs tell you of more. I could have given them, and divers more, but I thought them as unnecessary, as the doctor's are impertinent. But means he here that *disobedience to every provincial canon should be every where a terror*? If he do, judge you farther of him.

On the sixth chapter in his ninth animadversion.

Is the *English of e ratione*, upon that condition? I had thought it had been to that end or purpose.

In his tenth animadversion.

See here he *conjectures* they were by consent of the bishops, and conjectures only because he sees not the chartularies. His lodging was near enough to those chartularies, and he might have seen them at his pleasure. But indeed, if he had seen them, he had spoiled his conjecture, therefore it was best to let them alone.

In his eighteenth animadversion.

I have not a word of churches erected only upon lands of bishopsricks. But it is his fashion to make my text, and then to wrangle with it.

In his twenty seventh animadversion.

He was persuaded, he saith, that the common law had accounted an incumbent's estate to be fee simple. Then was he falsely persuaded. For though now it be as a fee simple, yet in those elder times it was not, and that I have taught, but the doctor will not learn it.

In his thirty third animadversion.

What means the doctor, to tell you, that the use is contrary by that canon, when I cite the very syllables of the canon, that affirms the use, and remedies it? But as he doth frequently, so here he deals most fraudulently with you, reader.

In his thirty fourth animadversion.

If the case, even as he relates it, be not for the purpose of the lay patrons claim in that time, and according to my intent, I understand not the words of it. I bring it not for coparcenary, but with the other quotation I bid the reader look that too. If I had not done so, the doctor I believe, would have been troubled to find it.

In his fifty fourth animadversion.

He tells you that I make inference, as if only laymen did make those inferences. I expressly write, that both lay and clergy did so. And why, good doctor, should the word, kings, there, make me think more of Charles Martell, than that the meeting with the word, doctor, any where, should presently make me think of doctor Tillefley?

In his seventy second animadversion.

I wonder why he should think that I read not that epistle in the author himself; I am not so unfurnished, but I have both, and fo noted both to him.

In his seventy fifth animadversion.

Here is a slur about Hællor Boethius, as if any man that knows story, knows not also the world of fictions in that of his. And where do I expect, good doctor, that my book should gain strength from my name alone? Will you never leave this falsifying?

In his seventy ninth animadversion.

Where was the doctor's mind here? If that of the lepers be to this purpose, judge you? But is my conclusion false, touching general councils, because the capitulars were confirmed by popes? Are capitulars, confirmed by popes, general councils? Think again, doctor, some other thing. Look up all the doctor's logick here. On the tenth chapter in his tenth animadversion.

What I tell you, some antients report, he falsly tells you is my assertion; the truth being, that I both hear the report, and shew to be expressly false too. In regard of the council of Lyons, which they talk of; neither is any syllable of any such thing in that council, though the doctor patiently takes that relation of the monks for a certain truth.

In his twelfth animadversion.

See if this be sense; because I say few enough are of such an opinion, therefore, said he, I say, too few are of it.

In his seventeenth animadversion.

In the name of his own profession, what means he here? May we do any thing that is expressly against the divine moral law to avoid scandal? I would, he would interpret that doctrine.

In his twenty second and twenty fourth animadversion.

How well or ill my censure becomes me, who, with all reverence, acknowledge myself the son of that mother of learning, judge you, reader. And for that of Gisburne, he might have seen, and used the original, if he would but have asked for it, and then might have known that it was in the time of Edward 1. but he had rather stay in a false conjecture; than take the pains to rectify himself with certainty.

On the eighth chapter.

* What hath beatus Augustinus, in the laws of the Confessor, to do with Austin the monk? Plainly that is for St. Austin the father, who preached for tythes, as it is there expressed. And then what have we to do with Etzelbert, to be noted by the name of rex generally in the Confessor's laws? How bold the doctor is here to cozen his reader with equivocations of names!

In his second animadversion.

Is here any thing against my saying that in the eastern church, no laws do mention tythes? Doth the doctor produce any syllable against it? But for payment, there, I have expressly affirmed it.

In his fourth animadversion.

The doctor never saw those exceptions of Egbert, I know he never saw them. Yet he tells, I must take notice out of Bale, who it was that epitomized them. Because one epitomized some of Egbert's, therefore these. Is this your logick, doctor? We use no such in the inns of court.

In his sixth animadversion.

He tells you of Etzelbert, and his parliament; there is no such matter. But he deceives you, and himself too with the name of Austin again, taking St. Austin absurdly for Austin the monk, and (were it Austin the monk) what syllable is there to prove that Etzelbert is meant there? And what a wise admonition it is for a reason that king Ethelulph needed not to have asked the consent of his bishops, &c. He must be taught that in the ancient charters of the grants of lands, and small gifts, that phrase is frequent. And for his fifth and sixth reasons; thinks he, that every old charter presently became a perpetual binding law in practice? Every man that knows the former state (which the doctor should have learned) knows the contrary.

For his notice that he gives me at the end of his chapter; I thank him for his courtesy. But what's that to the matter, because they are in Isidore? But he hath an itching humour to give me notice still of something. Indeed I have

given him notice of so much, that he never saw before, as I suppose, he thinks himself bound in charity to requite me as he can.

On the ninth chapter, in his first, second, and third animadversions.

He tells you of France here to oppose only what I say of England; and the capitulars that were for the old empire and France, are urged to it. You should have looked better about you, doctor, and remember that France is not England.

On the tenth chapter, in his third animadversion.

Again, he comes with *Auslin the monk*, instead of *Auslin the father*. And for that of *Boniface* which, he says, should not be omitted, the very words are cited by me, p. 66. and out of it he concludes, that there was tything, not long after *Auslin's* time; 150 years are not long with him.

In his sixth animadversion.

All the doctor's learning cannot prove that *diocesis* and *province* are such distinct words, as that they may not denote the same thing. Then he tells you, that I persuade my self that the *parochial* right began not till after the council of Lyons. If his eyes had been open, he might have read there that I expressly say the contrary.

In his eighth animadversion.

Do I refer that to the council of Lateran under pope Innocent III? Read again, good doctor, and you shall see I do not. I question it whether it be to be referred to that of pope Alexander, or to the decretal of Innocent? And it may be to either, or to any thing else, for all your example, that belongs not to it. For what syllable have you in that example, that notes your council of Lateran to speak against arbitrary consecrations.

On the eleventh chapter, in his fourth animadversion.

Because perhaps once discharged, therefore faith he, not now newly created; as if after a discharge of rent, or other profit, the next grant were not a new creation. But here the subject is such a thing, that the doctor may be pardoned for talking he knows not what, in it.

Now for his records of Rochester; That of Gundulphus proves only, that in that church all the tythes there reckoned, which many laymen had given, were confirmed by him. But was it not so even in that charter of lands too? This sometimes was done, and I have expressly shewed him so much in my history. But what is this to the common practised secular laws? Let any man that hath eyes compare my examples, and he will easily see it disproves nothing, but stands wholly with them. And you must note still, that the lay-grantors never looked after these confirmations in those days. They and their counsel knew the practised law was such, as that there was no need of such confirmations 'till towards the end of the third part of my division of time. Nay, do not my examples largely shew, that the layman was the

sole grantor still? And for his telling you against me, that the patron gives them the bishop. What colour, what one syllable for colour is there for any such thing in his whole charter of Gundulphus? But he would have it so, and therefore he thought that every thing proved it so.

^b He tells you of a confirmation, which I suppose (as he says) the first. I neither say, nor suppose any such thing: I relate it as one, but I talk neither of first nor last. And with these very arguments he might as well have proved to you, that lands given to the churches must be confirmed by the bishops, for sometimes there came afterwards confirmation of lands also, as is obviously seen in public records, Innocent's epistles, and elsewhere.

In his fifth animadversion.

He tells here of the quotation of the roll in the margin, to have reference to that writ. There is no such thing. The roll I quote in one place, and the writ in the register in another; neither have they any reference at all to each other.

In his twelfth and thirteenth animadversions.

As if *parochiani* and *decimae pertinentes ad ecclesiam* prove any such thing. There were *parochiani*, and *decimae pertinentes ad ecclesiam*, long before parochial right settled in tythes. And that I have sufficiently taught the doctor, but he will not learn it.

In his sixteenth animadversion.

Judge of my 14th chapter, if I shew not express examples of secular law: If the doctor can read, he may there find it.

In his eighteenth and nineteenth animadversions.

Here he plays a little, and then he asks what rule is there in the common law, concerning tythes, but it is taken from the ecclesiastical law? He forgot himself too much, when he asked this question. What are the allowances and customs, and such like, that divers prohibitions are grounded on, both in England and other states?

On the twelfth chapter, in his second animadversion.

What an egregious search for cavil is here? Because I cite two confirmations of the two archbishops, and (the confirmation of *Tork* being made long before that of *Canterbury*) I put for the order of time, that of *Tork* first, therefore he tells you, that I will be against the known authorities of those prime sees. He would have me put *Henry II.* before *William Rufus*, rather than let the name of *Tork* by chance be printed in the same leaf before *Canterbury*. What call you this now? Look among the words he hath collected out of my preface in his own, one or another of them will certainly serve.

In his third animadversion.

Who doubts but that they which held *pleno jure* might present, if they would, but were not bound to it? But the doctor is too far out of his element here.

In his fourth animadversion.

I have shewed you enough, that the common law in those times did give such power so to appropriate, though now it do not, and though

sometimes confirmations were from bishops, yet they grew not common 'till about the end of the third four hundred years.

In the seventh animadversion.

He would shew me a precedent, where the incumbent was granter in those times. I will thank him if he do, and acknowledge his instruction: But I find no such thing in the records of Rochester, to which he refers you, unless I understand not what a granter is. And I speak also of granting of rents only, and to shew that, he instructs me with an example out of that appendix to the council, where the parson releases tythes. Is a release of tythes a grant of rent? Lord! what a stir the doctor would have kept, if I had said so.

In his sixteenth animadversion.

But then he is much troubled here with *nominare* in Cicero. Plainly the nominating of him that was to be consul, or other magistrate, was a giving of the office in him that nominated, however, (if the suffrages denied him) he that was so nominated, missed it.

For the other two chapters, there is nothing he hath of them, but what I dare trust the reader with, neither is my admonition further necessary.

To the Review.

^a For his making the first of these quotations to be a case of *infeodated tythes*; he should have learned that those words which are cited out of the end of the canon, are for the future interpretations of the council of Lateran, and not at all touching the particular case there in question. And for the other of being before due; who sees not that they were supposed due indeed by the canons? But what is that still against the story of practice in new creations?

^e Had he said those *chartularies*, he talks of, were of more common and open use in legal proceeding, he had told me of an example, whose like I had not seen. I my self know,

and so I have told him, that they were still kept in *chartularies*, and have given him large testimonies of it. But when he says, they were in all pleadings exhibited; 'till he shews me the pleadings with such instruments entered, I shall take leave not to believe him. I have seen as many pleadings as the doctor, I think, and I could not yet see one that had any such entry in it.

Thus much have I curiously noted upon such places chiefly, where either the doctor lays falsifying to my charge, or he himself falsifies my text. What else he hath, lies in my words of argument, such as they are. And I will not at all doubt, but that the able reader (with whom only I care for preservation of the opinion of my faith) knows how to deal with them.

But perhaps you look I should not let slip that piercing piece of wit, that he hath put on my name, by turning it backward. I am sorry for his sake, that my name backwards signifies nothing; but we guess at his meaning; he meant it for *needless*. A sharp one, I assure you. Yet some, by virtue of a like way of wit, (that I confess, I will never make an example to mine) take it for *needles*, that have pricked the doctor, and to that indeed it is nearest in letters, though no more in sense, than what the doctor would have. I remember the school-boys had this trick, when I was a child, and we commonly so called each other with turning our names backward, and so the boys then called me. Is the doctor no farther yet? Would he but allow me such a piece of boy's play, I could give him a significant anagram of his own name; *I tell lies*, makes it up exactly. See whether that hath leis to do with him, than *needless* with me. I am not so unmannerly as to apply it to him; do you, reader, as you shall see cause in what I have noted to you; but I shew it only as an example of his childish adventures.

^a Pag. 228.

^e Pag. 229.





A
L E T T E R
T O T H E
Marquess of Buckingham.

A

L E T T E R

T O T H E

Marquess of Buckingham.

My most honoured lord,

I beseech your most noble goodness to favour these lines; which I send, not to save me a waiting; but that they might remain as a constant testimony both of my acknowledgment of your lordship's so great favour towards me, in taking me so far into your care; as also of the very thoughts of my heart, touching what it pleased your lordship at *Greenwich*, lately to permit me to have speech with you. Your lordship then seemed much to dislike my abstaining from the expression of my opinion touching the *divine right of tythes*. And I then had cause to fear also, that you conceived it to proceed more from wilfulness in me, than sufficient reason. To free my self from the continuance of that misfortune, of being so thought of by your lordship; I beseech your goodness to but take into your consideration the true reasons why I abstain from it. The question, my lord, is merely of divinity; a study wherein I have been conversant, only to make me a good christian, and not to enable me to resolve school scruples, which are determined both ways (as this is) among the greatest scholars. And I beseech your lordship not to think it towards wilfulness in me to abstain from expressing my opinion in that, which is neither any question of the profession or studies which I have been bred in; neither have I ever studied it for a resolution; neither were I, perhaps, able to defend either side of it against such as, out of their professed studies, might dispute against me. I know, my lord, what other men in their published conclusions have affirmed or denied touching it, and that I declared at large in my history; But of their reasons of affirmation or denial, I never durst make my self such a judge, as to express a resolution either way amongst them. I leave that wholly to divines, to whom it properly belongs. But your lordship also moved me therefore to study the question, that I might so at length deliver my opinion. Alas! my lord, I know the way of study, at least, so far, that I dare not be-

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lieve I am clearly and fully to be furnished to a resolution, in this or that so scrupulous question of divinity, unless I had first even wrought my self into the faculty, by a continual study of the body of it; And if I should be so rash, by studying it, as to resolve it either way, it must of necessity be that, when I had done, I should either resolve that they were due *jure divino* or not *jure divino*. And I trust your lordship doth not wish that I should chuse my side before I studied it, and were able also to defend it. If then, my lord, I should so upon study of it chance to conclude, through my own collection, that they were due *jure divino*, I should notwithstanding much doubt of my own judgment; when I find, that not only in the churches of *France, Spain, Italy, Germany*, and of all other foreign christian commonwealths, whose practice I have read of in their laws and decisions, but also in the laws and practice of this his majesty's great monarchy, that no tythes are at all, or have been for many ages since, paid or to be recovered as due *jure divino*, but only according as the secular laws made for tythes, or local customs, ordain or permit them. Good my lord, then think but what it would be for me, a private man, and bred in the studies of secular laws, to determine the question on this side, and so accuse both the whole state I live in, and all other churches of christendom, of an universally established practice against the law of God. And although, by my study, I should perhaps find reason that might persuade me this way, yet should I rest diffident still of my own judgment; not so much out of that more known reason, because so many subtil schoolmen are against it, as for finding the general practice of christendom to cross it; Nay, I should, my lord, as I ought, so reverence alone this church and state of *England*, that seeing both the antient and present practice of tything in it, is only according to the permission of the positive laws of his majesty and his progenitors, that whatever my own weakness might (if I

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meddled

meddled with the question) perswade me to, I should not yet dare to affirm, (as some do, and that daily in print) that the practice of the church and laws of the kingdom daily exercised, are contrary to God's law; especially also when as, not only in books publickly here commended to the people, often reprinted, and, at this instant, kept to be read in most, if not all, parish churches through *England*, there be discourses and arguments expressly and at large inserted, to prove that tythes are not due *jure divino*: (as I noted in my late declaration of my purpose, exhibited to his most excellent majesty) but also in a book written in behalf of all the clergy, especially of the bishops, (by the name of *an admonition to the people*) and printed by publick authority, and by the late queen *Elizabeth's* printer, in the thirty second year of her reign, it is expressly affirmed, That it is an error of the *Papists* to hold that tenths and offerings are in the church *jure divino*; and it is further reckoned there also amongst their *greatest* (I recite but the words) *and grossest errors*. Alas, my lord, with what can your lordship suppose I were able to defend, either my opinion, my discretion, or my manners, if I should, upon study, dare to express a resolution of mine own against such testimonies of the state and church. On the other side, my lord, if I should perhaps after studying the question, resolve to myself that they were not due *jure divino*, but only by the positive law of the church or state; I know my expression of so much, would but add to the displeasure hitherto conceived against me. Therefore, good my lord, think it not wilfulness, when I desire so to abstain also from studying the question for expression of my opinion, in a matter, in the resolving whereof on the one side, I should tax both the state where I live, and also all christendom, for committing every where, by execution of their established laws, against God's laws; and in resolving (as it might happen) on the other side, I could gain nothing but increase of displeasure against myself. Therefore I would not willingly strive to work myself vainly into an expression of either side of the question. But leave it as I have ever done wholly to greater judgments. But, my lord, you spoke also of the great prejudice that the clergy hath suffered, through the publishing of that book. I doubt not but that both his majesty and your lordship have been moved only by information, to speak of any such prejudice. I would to God, your lordship

would be pleased to but ask of them which give the information, for some particular example wherein any clergyman hath been, or indeed can be, barred, through it, of one penny profit of such tythes as his majesty's laws command, or allow to be demanded; I dare venture the loss of my life if any such example can be manifested, whatsoever their information be. For indeed also, my lord, if it had been so, that my whole treatise had been written in express terms, and to no other purpose but to prove, that tythes had not been due *jure divino*, (which is the worst that I am charged with) and although, my lord, so much had been also proved, yet could not any man of the clergy have lost the least part of his tythes, which are paid, and ever have been recovered through *England*, as in all other kingdoms of christendom, according only as the king's positive laws command, or allow the demand of them. And although there had been such prejudice to them; alas! my lord, what were my opinion for a remedy? There are enough that have and do write, at their pleasure, for the affirmative opinion. All, that will, have liberty (and some use it) to write here and preach what they will against me, to abuse my name, my person, my profession, with as many falsehoods as they please; and my hands are tied: I must not so much as answer their calumnies. I am so far from writing more of it, that I scarce dare (for my own safety) so much as say they abuse me, though I know it. What prejudice then forever there were, the expression of my opinion, I conceive, could add nothing to the remedy, especially when for so much as lies in opinion or persuasion of the people, is wholly in their hands who so pretend their own prejudice. Take these things, I beseech your good lordship, into your consideration, and I trust they will so clear me with your lordship of all imputation of wilfulness, that your lordship shall not have cause to lessen your most noble regard towards me, in intercession to his majesty for my standing right in his favour; to whom as I owe all the humblest and most ready service of a subject; so would I gladly ever abstain from frowardly shewing any such weakness, as might justly note me for one unworthy any way to serve him. But I trouble your lordship, yet, that I might thus far do so, I was confident, out of your lordship's so free and known goodness, to which I shall ever rest

MAY V. CIO.DCXX.
from the Temple.

most devoted

J. S E L D E N.

THREE
TRACTS

Written by Order of
King JAMES.

TO THE K I N G.

MOST humbly I offer this to your majesty's so excellent *goodness* and *learning*; both which have bred it. The first by your *gracious admonitions*, the second by such *directions* as might even provoke me to wish myself so *convented* again, that I might in something else be so fully directed. For in that unimitable *sweetness of your nature*, and the *admirable and ready store* of your *knowledge*, I found even a most gracious licence to put off all fear of the majesty of so great a king, and to hear and speak to you only as to the *best man* and *greatest scholar*. Whatsoever I have performed in it with all other my labours, I most humbly submit to the *most able censure* of your majesty; with whom, if it find favour, I am happy, and shall, I doubt not, rest secure enough against all such further *calumnies* and *imputations*, as have hitherto, by disturbing the quiet of my studies, prevented the dispatch of that other *treatise*, whereunto your majesty was also graciously pleased to incourage me. I shall now go on in that essay of my vowed service.

Your majesty's

most humble subject,

J. SELDEN.

WHEN his majesty was lately pleased to call me before him, and question me about my writing the history of rythes. He then also most graciously vouchsafed to have speech with me (as the time permitted) of divers parts of learning, which either offered themselves out of the consideration of that book, or obviously fell into his so searching a discourse; and this twice at Theobald's, and once at Whitehall; and at every of those times (besides the exceeding sweetness of this nature, which I being converted before so great a majesty largely tasted of) I saw, with wonder, the characters of such a fraught of learning, of such a readiness of memory, of such a piercing fancy joined with so absolute a judgment in him, as if his greatness in all these abilities, had been no less than in his hereditary titles. But among the many passages, touching which I had the happiness to receive both instruction and admonition from the clear light of so great a master of learning; three particulars occurred, which (as it pleased him graciously to shew me) might give some scandal in the church, if not more clearly either rectified or explained by me. And upon my humble petition, it pleased him graciously to permit that I might so rectify or explain them. Two of them are passages by the way inserted in that book, of which the one is the mention of Calvin's judgment on the revelation of St. John, and of the number of 666 therein spoken of, which I touch obviously in the first chapter; the other, touching the just time of the celebration of our Saviour's birth day, which occurs in the review; the third being the whole purpose and end, which I had in writing that book. Of these three therefore briefly, and in the order, I have mentioned them.



OF THE REVELATION.

§. I. Of the passage touching the number 666.

IN the first chapter speaking of the identity of number, betwixt the Hebrew words סעשר *maishber*, that is, *tythe*; and בכרות *becoroth*, which signifieth *first fruits*; (in which kind of identity, both the Jews and divers of the ancient christians frequently supposed too much mystery) I add that, the *unlimited liberty of our times in so confidently daring to tell us the mystery of the number of the beast, would make a man give the more regard to these collections out of numbers*. And presently after relating a ridiculous casting up of that number out of *Thomas Elmhams* the prior of *Lenton*; I say there, that *this dream of the prior's hath no place there otherwise than as an old pattern of trifling boldness, used in the later arithmetick of many on that passage in St. John*. And such misfortune had I as to be so conceived, as if I had in those passages taxed all of *unlimited liberty and trifling boldness*, whosoever they were, that had offered to calculate that number; than which nothing was further from my purpose. And I briefly now both open my meaning that I had when I wrote it, and what also I have had the happiness to learn touching it from his most excellent majesty. For my meaning there; both passages being as I supposed, restrained to them which with too much confidence on their own fancies durst tell us, that this or that word certainly was denoted by the *Holy Ghost* in that number; of which sort of men divers are (some making it out of *Luther's* name by turning him ^a into לותר *Lutther* in Hebrew characters, or into Λουθηρας, or out of Σαλτινους, which denotes his nation; or out of *Martin Luther*, every of the letters being taken numerally by, I know not what liberty; for his name of all others, hath been most varied, and hath been suspected to have been by prediction denoted also by ^b *Luterus*, written over the picture of a monk in the college of *Innguen*, in *Carinthia*, founded by *Barbarossa*; others making it out of *Mahomet*, first according to their own fancies expressing it by Μαχμελις, the true name being *Mohamed*; others out of the Σαλτινους εως; others out of Σαλτινους; others, according to a like lightness, otherwise, as I had seen in *Vieira*, *Alcazar*, *Genebrard*, and some more of the later time, which I willingly omit here) I doubted not but to these I might justly

attribute *unlimited liberty and trifling boldness*; while they grounded themselves rather on their own rash fancies, or depraved judgments, than on the careful and impartial examination of the holy text, or of the true and false church. But I was in my soul as far from the purpose of denoting hereby all kind of interpretation of that number, as I was and am from believing or regarding the vanity of those I have now remembered. I ever thought with all reverence of that ancient exposition of this number in the name of Αλβινος; which *Irenaeus* ^c bishop of *Lyons*, but some 15 years after the apostles times, says, is *valde verisimilis*; where yet he offers other calculations of the number by names, as especially among the antients also venerable *Bede*, *Andrew* archbishop of *Caesarea*, his successor *Arctas*, and *Primasius* do upon the holy text. For also it was not without example before; among the *Gentiles* (from whose forms of expression, divers things were received into christianity) to denote names by numbers only; as we see in that of Σαρπεις designed antiently ^d by the word Σαρπειςμαλор, because it is a name of seven letters; and in the prayer that the great lady *Philology* makes to *Phoebus*, in *Martianus Capella*, ^e she expresses him by

*Octo & sexcentis numeris, cui litera trina
Conformat sacrum nomen, cognomen & omen.*

that is, perhaps, 'HΥΞ', which makes just DCVIII. in *Greek* numerals, and is an old mystical name ^f of *Phoebus* or *Osiris*. But some take it rather for 'HΥΞ' that is *propitious*, favourably minded, or one that is *mente placida*, being ^g chiefly persuaded to think so by a divers reading found in some ms. copies of it, which have

Conformat sacrum mentis cognomen & omen.

as it is expressly also in an old written copy of *Capella* that I have. But also with all reverence, I think of such expositions, as to second this of Αλβινος, that the same thing be still, and according to the analogy of scripture and church story pointed out by them, which is the exactest rule of interpretation of it, as I was long since taught, especially by his majesty's most divine and kingly premonition to all *princes and states of christendom*. And he there and elsewhere in his excellent works, makes by a most acute de-

^a Florimond, de Raemond de la naissance de l' heresie, liv. i. ch. 6.
haeretic lib. 5.
nael Origénus.

^b Hefychius in verb. Σαρπειςμαλор.

^c Grotius ad dictum Capellae locum.

^d Paresius in chronice, Carinthiae.

^e De nuptiis Merc. & Philolog. lib. 2.

^f A Iversus

^g Plutarch. lib. octo. τοις

duction of time (which may as well have place here, as the account by numeral letters) *Boniface* III. and also *Benedict* II. to satisfy the same number ^b for the mystery of *Antichrist*'s name. And both stand with the sense also of *Asiaticus*, which denotes what is of *Rome*. Neither yet insists he upon the one or the other, singly, as upon clear certainty. Nor doubtless can his so exquisitely able and sharp judgment

fix with a clear confidence in any disquisition, but only where exact truth is perfectly discovered to him. But it is left to his readers choice to take which he likes best of them: all three resulting to the same end of proof. So was it left by the fathers of the primitive times, *nee asseverantes pronuntiabimus*, says *Irenaeus* of it; and *de re tam incerta nihil audeo definire*, are *St. Ambrose* his words upon the text.

§. II. Of *Calvin's* judgment on the *revelation*.

AFTER these words of the number speaking of the book of the *revelation*, I have a passage of *Calvin's* answer touching it which is related to have been, that *he knew not at all what so obscure a writer meant*. And this answer of his, (which I use only in the by, to denote the obscurity and difficulty of that part of holy writ) I there say was *as judicious as modest*, my meaning being, as I profess from my heart, that it was *as judicious* to see the difficulty and obscurity of it, in regard of his own understanding, as it was *modest* to confess it. And it was far from me to think there, that his answer was such as would have become all men, as if no man had known at all what *St. John* meant. And there was perhaps a time, even in the strength of *Calvin's* years, when he had no great reason to be very forward to adventure upon such difficulties in holy writ. For he spent a great part of his youth in the studies of *humanity* ^c and especially of the civil laws, under those learned *Stella* at *Orleans*, and *Alciat* at *Bourges*, and in those times he might speak that of the *revelation*, while he was yet of another profession. But also it might perhaps suit him without disparagement, even after he became a divine. For he wrote his *institutions*, and was made doctor at *Geneva*, before he had seen

twenty seven years; which is not an age, wherein a divine, especially one that comes but lately from another profession, (as he did) should venture too boldly upon such difficulties. And the tradition among the *Jews* is known, that the prophecy of *Ezekiel* ^d is not to be read, much less expounded by any man, that is under the age of thirty, and that only for the supposed difficulty. Besides, though *Calvin* lived long after till the fifty fifth year of his age, and wrote divers commentaries on parts of the holy scripture, yet he never wrote on any part of the *revelation*. But whether, or at what time, he gave that answer, I of myself affirm not, but only upon *Bodin's* ^e credit who could not but know him; both of them being in their several ways very famous, and of the same time and country. And *Bodin* speaks it as highly commending him also, *valde mihi probatur*, saith he, *Calvini non minus urbana quam prudens oratio*, &c. But all that I intended was only this, that he expressly confessed a great difficulty in it, which the more commends the interpretations of it, made according to the analogy of the text and order of times, among which his majesty's, specially in that his unimitable *premonition*, is as the clearest sun among the lesser lights.

^b Praefat. monit. ad reges, &c. et paraph. in apocal. cap. 13.

^c D. Hieronym. in Prologo galeato.

^d Method. hist. cap. 7.

^e Theodor. Beza & Melchior Adam. in vita Calvini.

OF THE BIRTH-DAY OF OUR SAVIOUR.

BRIEFLY

*Of the anniversary celebration of birth-days : The state of the question,
and this discourse digested into parts.*

IN the review of the fourth chapter, having occasion to speak of the authority of the *Clementines*, that is, the eight books of *constitutions*, attributed to the apostles, in which an express constitution is, that the birth-day of our Saviour should be celebrated on the twenty fifth day of *December*; (or of the ninth month, as it is there called, being accounted from *April* as the first) I noted that constitution for one character of that volumes being supposititious; in regard that in the *eastern* church (where those constitutions being in *Greek*, must by all probability have been in most use) the celebration of that day was not received on the twenty fifth of *December*, until the ancient tradition of it was learned from the *western*, about four hundred years after Christ; and some touch also I have there, of the opinion of them that think that day not to be the true time of his birth. This passage hath been so conceived, as if I had purposely called in question the celebration of that sacred day (which is ἡ ἡμέρα ἡ πρώτη, as *St. Chrysostom* styles it, ἀρετῆς ἡ πηγὴ, ἡ βίβα πᾶσι ἡμῶν ἀγαθῶν, that is, *as the main fort of all happiness, and the fountain and root of all good that we enjoy*;) and so call it in question, as if I supposed it were observed at that time without sufficient ground; and as if I were too inclining to that part of the hot-brained and disturbing puritans, which impiously denies the keeping of a day as an anniversary feast consecrated to the birth of our blessed Saviour; from which my conscience was ever, and is most clearly free. For I knew, first, both from sacred and profane story, that the anniversary birth-days, not only of princes, but of some private men also, were with frequency ever observed, and the beginnings of cities under that name yearly celebrated; And even among the heathen, those that professed

such philosophy as was nearest to true divinity, that is, the *Platonists*, were most religious in yearly keeping their *Plato's* birth-day, which they received by tradition to be the same with *Apollo's*, that is, the seventh day of the *Attick* month *Thargelion*, which answers to our *April*; and this was still observed till the time of *Plotinus* and *Porphyrus*, who lived about 270 years after our Saviour's birth; and after the discontinuance of it for many ages, it was revived in the days of our grandfathers, with much solemnity, in the duchy of *Florence* by *Lorenzo Medicis*. But he misplaced it in the year, while he and his guests being better *Platonists* than *chronologers*, took the seventh of *Thargelion* to be the seventh of *November*. As also the old trifling *astrologers* committed a like fault, while in the scheme of his nativity they place the sun in *Pisces*, which must denote our *February*, or the *Attick Anthesterion*. But however, an anniversary day was observed for his birth: So was there antiently for the birth of some false Gods; For they had their certain days for the births of *Mars*, *Apollo*, *Diana*, *Minerva*, the *Muses*, *Hercules*, and others, and carefully observed them; And for princes, and private persons, even to this day a celebration is in use at the yearly returning of their birth-days. To deny therefore, with that wayward-sect, such an anniversary honour to the Saviour of the world, were but to think him less worthy of it than false Gods were esteemed by the gentiles, than princes by their subjects, than private friends by their greater friends, whose birth-days they have yearly celebrated. But of this I trust no man that truly deserves a name among christians will make scruple. Some indeed (and those not a few among the learned) have doubted of the *just time of the birth of our Saviour*; which while they doubt, they offer the more occasion to

* Tom. 7. odie, Savilianus, page 721. lxx. 11. lib. de die natali.

† Plotarch. evag. 8. cap. 1. Lactantius in vita Plot. &c.

* Jul. Firmicus Mathes. lib. 6. cap. 30.

† CC. Theodof. & Julin. tit. de feriis. Sed de hac re plene Maritimus de Ros

4 Marfil. Ficinut comment. ad Plot

† Calend. vet. Rom. a G. Herwarto, nuper editum, &c.

St. John, ¹ Ἐξέως δὲ αὐξάνει, καὶ ὁ ἐλαττωθεὶς, i. e. *He must increase, but I must be diminished.* So St. Augustin also, *Natus^k est Johannes bodie, ab hodierno minuuntur dies; natus est Christus 8 kalend. Januarias, ab illo die crescunt dies.* And enough to this purpose occurs in others of that age, wherein these two births were observed, and only these two, and that in all, or the greatest part of christendom, *folius domini* (saith^m St. Augustin) & *beati Johannis dies natiuitatis in universo mundo celebratur & colitur.* But it being so clearly plain that about this time of four hundred years past after our Saviour, this twenty fifth day was so observed, and taken generally for his birth-day, it falls next to enquire the original whence it was so taken: Had those *Clementines* been of sufficient credit, there had been no need to have made further inquiry; for then we might have thence resolved that the apostles had ordained it; and it had been fit for them that stand so much for the authority of those constitutions, to have proved that the apostles had done so, that so they might have cleared their supposititious volume of such a character of falsehood. For doubtless, had such a constitution been published in that volume, and by the apostles, the eastern church had not so long been ignorant of it, as it appears by St. Chrysostom they were: For until some ten years before his sermon^a made upon this day, especially for the truth of the time of the feast, that church had not been generally instructed with this certainty of it; for then it was newly learned from the western church, in which even from *Thrace to Cadix* (as he tells us from such as instructed him) it was so observed. But although that ordinance touching it in the *Clementines*, attributed to the apostles, be supposititious, yet there is great reason for us to think, that the tradition of this feast to be so kept on that day was apostolical, that is, taught and deduced into the church (though not in writing) both from the apostles, and first disciples and observers of our Saviour. *Quid autem* (saith^m Irenaeus) *si neque apostoli quidem scripturas reliquissent nobis, nonne oportebat ordinem sequi traditionis, quam tradiderunt iis quibus committebant ecclesias?* And we shall here use aptly enough the very words also of ^b Tertullian, speaking of divers observations in both sacraments, and other parts of christian religion in his time, which was near the apostles; *Harum & aliarum ejusmodi disciplinarum si legem exposuisset scripturarum, nullam invenies: But, traditio tibi praetendetur auctrix, consuetudo confirmatrix, & fides observatrix.* But for the order of proof here, (it being first cleared that this tradition was about the time of those fathers that testify it commonly received in christendom) before we come to the particular deductions of it out of the elder ages that preceded them, we shall here not untimely first note, that as it was commonly received as a thing then settled, so was it also generally thought of as what was then very

antient. So says St. Chrysostom expressly, ^c being instructed from learned men of the western church, it was then *αὐθαδὴν καὶ πρὸ πολλῶν παλαιῶν χρόνων ἐκείνων*, that is, of ancient time, and delivered in the church many years before, as his words are; and yet, saith he, it is new too; new in the eastern church, because (as he writes) we have so lately learned it, that is, within ten years since; but he calls it *παλαιὰ* ὅτι ἀρχαίαν διὰ τὰς προσηλυτίους παλαιοὺς χρόνους, &c. i. e. old and very antient, in that it is even of equal age with the antient feast-days which they had received: and again, though it came but lately into the western church, yet it was, saith he, *παρὰ τοῖς τῶν ἐκείνων αὐθιγῶν χρόνοις*, i. e. well known from antient time to those that were of the western church. And St. Augustin also expressly says, ^d that the birth was upon this day, *sicut tradit ecclesia*; which denotes great antiquity even in his time. And in ^e another place, speaking of the celebration of St. John Baptist's birth-day, which was received with this, (it seems) by a like tradition; *Hoc majorum traditione suscepimus, (saith he) hoc ad posteros imitanda devotione transmittimus.* These passages alone are enough testimony, that this feast-day, thus placed, was reputed in those times, (that is, about four hundred years after Christ) very antient; But to know how antient it was more particularly, it behoves us to look backward from those times by such degrees, as that by carefully observing one of them after another, up towards the times of our Saviour, we may be herein instructed according to the occurrence of such testimony as may make to the end of the inquiry; and I doubt not but we shall so well enough at length find it received in the church, (in the western church,) even from apostolical tradition, derived from observation, while yet our Saviour was on the earth. But to begin this course of inquiry by looking back by degrees from the time of St. Chrysostom, and the rest of the fathers of about his age, we shall first look on the time of near 100 years before them, that is, of Constantine the great, and the first general council of Nice, held under him in the year 325; at which time we shall, by sufficient arguments, first shew, that this feast was kept on the twenty fifth day of December, as now it is, and that then also from antienter time, against those which suppose the beginning of it no older than after or about Constantine; and from thence we shall go upward to the apostles. But because the proof that hath first reference to the time of this council, and makes much otherwise also for confirmation of the antiquity of this celebration of the day, (as shall be presently shewed) consists especially in observation of the name of the time under which those fathers received, denoted, and celebrated it, that is, of the very day of the winter solstice, with reference to the spring equinox, as to the time of the conception of our Saviour, and to the summer solstice, and autumn equinox, as to St. John's

¹ D. Joan. c. 3. comm. 30.

Hiero. in epist. de celebr. Pasch. tom. 4.

^a Advers. haeres. l. 3. c. 4.^b De nat. Jo. Bapt. eodem tom.

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^c D. Aug. serm. de diversis 40. & 59. l. 4. advers. Crescon. c. 37. & in Psalm. cxxii.^d Sermon. de sanctis 2.^e De coronis militis, c. 4.^f Enarrat. in Psalm. cxxii.^g Sermon. dict. item in hom. 24. tom. 2. edit. Basil. & in serm.^h D. Cluyf. edit. Savillana, tom. 5. 287. ed. p. 511.ⁱ Sermon. dict. item in hom. 24. tom. 2. edit. Basil. & in serm.^j Sermon. de sanct. 4.

birth and conception; it is first here requisite, that we shortly open the antient supposition which the most primitive times had, touching those four beginnings of the quarters of the year; which (being much different from what was received, both at the time of the council of Nice, and before it, and from what is also yet retained in church-cycles) will make way for confirmation of the received opinion of the just time of that sacred birth-day.

SECT. II.

For preparation of more particular proof of the tradition of this feast-day, the supposition which the most primitive ages had touching the time of the solstices and equinoxes.

THE antient and civil supposition of the *solstices* and *equinoxes*, (in which an express character is found of the antiquity of this tradition, as shall be presently shewed) was both before and about our Saviour's birth-day, (especially in the *Roman* empire) of another kind from that which either at this day is, or at the time of the birth was agreeable to the more accurate and natural astronomy; I mean, the supposition which was publicly received in their *kalendars* and *parapegmata*, which denoted both their sacrifices, feast-days, and country observations for matter of husbandry: For they supposed in those *kalendars*, that the sun's entrance into the first degree of *Aries* was on the fifteenth kalends of *April* in the *Julian* year, that is, on the eighteenth day of *March*; but that the *spring equinox* was not until the eighth kalends of *April*, that is, the twenty fifth day of *March*. So likewise for the *summer solstice*, upon the fifteenth kalends of *July*, that is, the seventeenth of *June*, they placed the sun's first entrance into *Cancer*; but the solstice on the eighth kalends, that is, on the twenty fourth of *June*. So the fifteenth kalends of *October*, or the seventeenth of *September*, was their supposed time of the sun's first entrance into *Libra*; But the *autumn equinox* on the eighth kalends, or the twenty fourth of *September*; And according to these the first entrance of the sun into *Capricorn* they placed on the fifteenth kalends of *January*, or the eighteenth of *December*; But the *winter solstice* on the eighth kalends of *January*, that is, the twenty fifth of *December*; So that the *equinoxes* and *solstices* were not supposed in the first entrance, or in the first degree of those four signs, (as at this day they are, and many ages since have been) but at such time as the sun held the eight degrees of them. For the sun's proper diurnal motion being about a degree, it so fell out in their calculation, that eight days being reckoned from the first entrance into every of those signs (as is seen in the examples) on the eighth day the sun was in the

eight degrees of those signs, and then made the supposed time of *solstices* and *equinoxes*. The testimonies of this kind of placing them in those times are frequent. *Ovid*¹ expressly teacheth us so for the *summer solstice*. But in the *kalendar* that is commonly joined with him, and received by others, it is therein mistaken. The like for all four² do *Pliny*,³ *Columel*,⁴ *Vitruius*,⁵ *Martianus Capella*⁶, the scholiast on *Germanicus* his *Aratus*, and the author of the fragment joined with *Censorinus*: And of the natural forces of the two tropicks, or *solstices*, to this purpose *Manilius*;⁷

*Has quidam vires octava in parte reponunt;
Sunt quibus esse placet decimas; nec desuit autor
Qui primae momenta daret, fraenosque dierum.*

Meaning that the common opinion was, that they were (with the *equinoxes*) in the eighth part of their signs, but that some thought them otherwise; some in the tenth, some (as they ought) in the first. But this opinion of the eight parts, and so by consequence of those times of the *equinoxes* and *solstices* was a most antient tradition, and retained still in their *kalendars*, or *sasti*, made for civil, sacred, and rustick use; notwithstanding that the more accurate astronomers had found it to be an error; not otherwise than at this day those which keep the *Julian* and *Dionysian* account in the church, (as we in *Great Britain*) suppose the *spring equinox* on the 21st of *March*, though the known astronomy teach us, that it anticipates about eleven days. And as it happens in like cases, they still retained what had been from antient time settled in the state, neglecting the corrected astronomy; and that especially, because those old *kalendars* were already fitted to their feasts and sacrifices, and were more known to the people, who could not but have been much troubled with an innovation of the time of all their publick solemnities. Neither did *Sosigenes* in his divers amendments of the year made upon *Julius Caesar*'s command, or the rest after him so employed, alter any thing in this supposition: All which is fully expressed in that of *Columella*, in his precepts of husbandry; where having first spoken of the *solstices* and *equinoxes*, falling upon the eight degrees of those signs, he presently thus admonishes: *Nec me fallit* (saith⁸ he) *Hipparchi ratio, quae docet solstitia & aequinoctia non octavis, sed primis partibus signorum conscri: Verum in hac ruris disciplina sequor Eudoxi & Metonis, antiquorumque sastos astrologorum, qui sunt aptati publicis sacrificiis; quia & notior est ista vetus agricolis concepta opinio*. He gives here the true reason why that supposition was retained; but, by the way, is deceived in this, that he takes *Eudoxus* and *Meton* to be of those antienter astronomers, from whom it was received. It is true indeed that in the old *parapegmata*, which shew us that, according to *Calippus* and *Eutlémon*, the *solstices* and

¹ Fastorum l. 6.

chirost. l. 9. c. 9.

quod Geminio sub neditur.

² Hist. nat. l. 2. c. 10. l. 18. c. 25. & 19.

³ Nupt. Philol. Sc. Mercur.

⁴ Astron. l. 2. ad extrem.

⁵ De re rustica, lib. 9. c. 14. & l. 11. c. 2.

⁶ Agricolt. l. 9. c. 14.

⁷ Ar.

⁸ Pansp.

equinoxes were at the first entrance of the sun into the signs proper to them : *Eudoxus* yet had otherwise placed them ; as for the purpose, the *spring equinox* on the sixth day after the sun's entrance into *Aries*, and the *winter solstice* on the fourth day after the first entrance into *Capricorn* : But we find not that he had taught this learning of the eight days or parts ; no more do we that *Meton* was any teacher of it ; although also for this particular, beside the published *paraepemata*, I made special search also for it in *Ptolemy's* $\Phi\alpha\sigma\epsilon\iota\varsigma\ \alpha\pi\lambda\alpha\gamma\epsilon\iota\varsigma\ \alpha\sigma\tau\epsilon\rho\omega\upsilon\varsigma$, $\eta\ \sigma\upsilon\nu\alpha\gamma\alpha\gamma\eta\ \pi\alpha\nu\alpha\gamma\iota\alpha\varsigma$, a book never yet printed, but fraught with divers pieces of the *paraepemata* both of *Meton* and *Eudoxus* ; and wholly another thing from that which goes under a like name for *Ptolemy's*, published at the end of some editions of *Ovid's fasti*. Beside, it is certain, that the *summer solstice* observed by *Meton* with *Eutemon* in the 316th year of *Nabonassar*, that is about 440 years before *Christ*, was upon the 21st of the *Egyptian* month *Phamenoth*, as *Ptolemy* expressly testifies, which for that time agrees with the 27th of the *Julian June*. Neither *Eudoxus* therefore, nor *Meton*, thus placed the *solstices* on the eighth kalends of their months. Others of late time have much troubled themselves, to find the ground or original whence this supposition came among the ancients ; as especially cardinal *Contaren*, *Genesius de Sepubveda*, and most of all *Joseph Scaliger* ; but their conjectures are most uncertain, and too weak to rely on. Neither, I guess, will the original be found among any of the ancients that are classick in authority, but in a transcript of some parts of a *Latin* translation by *Abraham de Balmis*, of a book titled $\textit{Isagogicon astrologiae Ptolomaei}$, (which indeed appears to be *Geminus* his *phenomena*) compared with the *Greek* ; I find these words inserted, as if they were but translated from the first author ; *Uterque tropicus, & ambo aequinoxia, secundum astrologorum Graecorum opinionem, sunt in primis gradibus horum signorum ; sed secundum Chaldaeorum opinionem, in octavis gradibus* ; but the *Greek* copy hath no such thing ; though it be like enough that the copy whence he translated it, had ; that is an *Arabick* copy of *Geminus* who (as *Euclid* also, *Ptolemy*, *Aristotle*, much of *Galen*, and other *Greek* authors,) was turned out of *Greek* into *Arabick*, and thence into *Latin*, long before the *Greek* itself was translated immediately into *Latin*, as we have it at this day ; And it appears that his translation was from an *Arabick* copy, in that alone, that the *paraepema*, which is at the end of this *Latin Geminus*, hath the names of *Eudoxus*, *Calippus*, *Eutemon*, *Dositheus*, and *Meton*, so varied as frequently other names are, which are expressed out of *Arabick* letters into *Latin* in like translations ; as for *Eudoxus*, it hath *Orchastis* ; for *Calippus*, *Philitis* ; for *Eutemon*, *Ostiman* ; for the other two, *Dusfonius* and *Matheon* ; all which plainly were

mistaken by the translator, when he found either the names written without essential points in the *Arabick* character, or else mis-transcribed, (as it might easily be,) by such a writer as was not worthy to be trusted to ; for the misshaping of a letter, or the doubling of a point, and the like, soon makes such variance of names expressed out of that language. But for the matter of the eight *degrees*, and the *solstices* and *equinoxes* referred to them, here is authority that it had original from *the Chaldees*, which I yet think it as far from truth as that of *Columel's* ; neither is this a fit place to make larger inquiry after it. It here sufficeth to shew it manifest, that this placing of those parts of the year was observed from ancient time, and that especially in the state of *Rome* ; as we see also in those their old country-feasts, the *robigalia*, the *floralia*, the *vinalia* ; which were the three main feasts wherein, from ancient time, they made intercession to their Gods against all hurt that might happen to their green corn, the ripening of the fruits, and their vintage ; and were kept (and so noted by *Varro*) according to no other account of the sun's place or motion than is before delivered. And according to this account are the *equinoxes* and *solstices* in venerable *Bede's ephemeris*, noted with the addition of *juxta quosdam*, to be understood, although in the print they somewhat vary from it ; But it is clear, that in his *December*, the *solstitium juxta quosdam*, and in his *March*, the *aequinoctium juxta quosdam*, are both placed a day before they should be, that is, they ought to be on the eighth kalends, (not the ninth) the one of *January*, the other of *April* ; with which the *Sol* in *Capricornum*, and the *Sol* in *Arietem* there before noted, to the 15th kalends, exactly suppose the *solstice* in the 8th degree of *Capicorn*, and the *equinox* in the 8th of *Aries*, that is, in the 25th days of their months ; reference being still had to this ancient account, which he, being most curious in the cycles of time, would not omit ; although his *ephemeris* were purposely made for the *Dionysian* year, which also he hath together expressed in the same columns : But, I suppose, the chief reason why these two stand so displaced, is, because the noting of the birth of *St. Anastasia* was thought more necessary to the eighth kalends of *January*, than this old supposed *solstice* ; and therefore there being not room enough for the *solstice* to be added, it was cast upon a void place of a line next preceding. The same may be said of the *spring equinox*, which had no room on the eighth kalend of *April* in the column, by reason of the conception and passion of our Saviour together noted to that day ; And that he is so to be understood, he himself elsewhere is *testimony* enough, expressly relating this ancient course of accounting the *solstices* and *equinoxes* ; So that his *ephemeris* is a special example of it, if rightly understood ; as also is that *calendarium Romanum*, lately cut in brass, and so published from the

⁴ Cod. m. c. v. c. Henrici Saville eq. avari ; mihi vero communicavit pro sua humanitate v. c. J. Bambridge medicinae d. & mathematicus egregius.

⁵ Mathemata, syntax. l. 3.

d. ueniqueque doctissimus.

Plin. l. 1. c. 19. & Scholiast, ad Aratea prognostica.

⁶ Copiam mihi perhumaniter fecit v. c. Jac. Ulterius, sacrae theol.

⁷ Kal. Jan. Brumale solstitium observant Chaldaei, ait Columella, l. 2. c. 2.

⁸ De temp. ratione, c. 28.

print, and supposed to be as ancient as *Constantine* the great; where the *summer solstice* is indeed by the cutters or the transcriber's fault set to the 7th kalend of *July*, which plainly should have been on the eighth; and the sun's entrance into *Cancer* is on the 17th kalend, which should be on the 15th; as also the sun's entrance into *Aries* should have been placed there on the 15th kalend of *April*, which agrees just with the feast of *Hilaria* being on the eighth kalend. And according to this supposition of the anti-ents, did that learned gentleman, *George Herwart von Hohenburg* (out of whose library this *kalendar* was lately published) judiciously declare the reason of those differences that appear in it from the later astronomy; and that in his letter written to *signior Haleander*, a gentleman of curious learning in *Rome*; the copy whereof was thence sent me through the hands of that learned and worthy gentleman *monsieur Pierese*, an advocate in the parliament of *Aix*; and this some two years since, when betwixt him and my self, and from him to *Haleander*, divers letters passed touching the particulars and authority of that *kalendar*.

SECT. III.

That the keeping of it on this day was so received from tradition, even of the eldest times since our Saviour; and this justified from the fathers, supposing it to have been on the very day of the ancient winter solstice.

THAT ancient¹ supposition of the *solstices* and *equinoxes*, being thus hitherto first opened, let us, in looking back by degrees, first (as is before proposed) begin with the time of the council of *Nice*, held in the year of our Saviour 325. It will so appear, that before that council, this feast was established in the western church, and that by the general testimony of those fathers, which with one voice suppose it as formerly placed on the very day of the *winter solstice*; For had it been begun after or about the time of that council, and withal supposed to have ought to have been kept on the *winter solstice* day, then doubtless would they have placed it on that day, which was received in the church to be the *winter solstice* day, after or about the same council; as at this day in the *Gregorian* year, who doubts but that a feast to be newly instituted on an *equinox* or *solstice*, or with reference to either of those times, would be placed by them, which have received that reformation, on the *equinoxes* or *solstices*, or with reference to them according as they are in the corrected *kalendar*, and not as they fall in the *Julian* or *Dionysian* year? For example also; what greater testimony were there (if all other were lost) to prove the antiquity of that very kind of keeping the feast of

Easter as we do in our church, to be of the primitive times than this, that the *Paschales termini* are retained still according to the *spring equinox* received in the primitive times? Now to make clear our purpose, here it is also certain, that, about and after that council of *Nice*, the *spring equinox* according whereto the *paschal* cycles were made, was supposed in the church upon the 21st of *March*, as is seen also in the *Paschal* account used to this day in the church of *England*; so that it was become four days sooner than in those elder times, when it fell in common opinion on the 25th day: But when the *spring equinox* was so changed, and according to the change also received, it could not but follow that the beginnings of the other three parts of the year must also be altered, that is plainly seen in the known course of the sun's motion. And therefore the *solstices* and the other *equinoxes* must also vary in their months, and by a like or very² near like difference of days anticipate, as they are accordingly cited in *Bede's epemeris*, who³ elsewhere also admonishes as much. Therefore it must follow too, that about and after that general council the time of the *winter solstice* was placed (and so supposed in ecclesiastical account) upon the 21st or 22d of *December*. But if it had been so received when this feast-day was first ordained, and specially placed on the *solstice* day, (as the fathers generally by tradition from former times place it) there had been necessary cause enough to have had it fallen yearly three or four days sooner than it did, both in the primitive times, and doth at this day, that is, on the twenty first or twenty second of the same month. By consequence was it then ordained or received in the church, at such time as the *winter solstice* was not supposed on the twenty first or twenty second day of the same month, but on the twenty fifth, that is, at least before that council of *Nice*, or *Constantine* the great, however too rashly some have delivered⁴ of it, that *post seculum Constantini Romae hac observatio instituta est*. Neither can that objection have power here, which perhaps may obviously be brought to impugn this kind of argument; that is, that it might notwithstanding be ordained first in the later part of the primitive times, or after *Constantine*, or that council, in such sort that it might be placed on the day of the *solstice* that was received at the time of the birth, that is, the twenty fifth day, and not that which the corrected account had so innovated; For this objection is partly answered before in the passage of feasts at this day to be ordained, with reference to the *solstices* in the *Gregorian* *kalendar*: And besides, if the church, about this time after *Constantine*, had regarded in a new institution the *solstice* of the time of the birth, according as it was then to be found in the month, it must be that they either regarded the true and *natural*, or the received and *civil solstice*. For the first; If they had been so curious as to have sought what the

¹ Epist. Telephorip. & not. Bionii.

² Videlicet Marcel. Francolin. de temp. hor. canonic. c. 75 & 76.

³ De temp.

⁴ Jule Scal. de emendat. temp. l. 6. p. 110. & Calvisius Ilagoy. chron. c. 46.

rat. c. 18.

true

true place of the *winter solstice*, to this purpose, had been in the age of that birth, (as they had indeed sought for the true *equinox* of their own time for their direction of *Easter*;) they had found that the true *solstice* anticipated the twenty fifth day about two days; For, by the most accurate calculation to the noon of the meridian of *Bethlem*, on the twenty fifth of *December*, in the year commonly attributed to the birth of our Saviour, the sun was in the second degree of *Capicorn*, and some minutes over; (as ^d *Cardan* also places it in the scheme of that nativity) whence it must clearly follow, that about the twenty third day was the very point of the *winter solstice*, the diurnal true motion of that time of the year in the *perigæum*, being somewhat more than a degree. No place was then for this true *solstice* in such their consideration of the birth-time, if they had thus enquired after it, unless they would have instituted the feast, (under that name of time) on the twenty third day, and not on the twenty fifth. For the second; What colour have we to think that they should in those times have retained the old supposition of the *civil solstice*, for their institution of this feast-day, and yet so carefully alter the formerly received *equinox* for *Easter*? This of the birth being as the head and rule of the chiefest immovable feasts, as that of the passion and resurrection is of the *movable*. Would they have retained the same error upon institution of a new feast, which with so much curiosity they had corrected in establishing the certainty of an old one? It rests firm therefore, that whensoever it was first instituted for anniversary celebration, it was in such an age, as had the supposition of the *winter solstice* being on the twenty fifth day of *December* yet retained in the church; Otherwise what dependance were there betwixt the name of the feast and the *solstice*? But that dependance is by the consent of the fathers fully testified, as a tradition of former times; and the latest age, which in the church retained that supposition, must at least be before the council of *Nice*, as is already shewed; therefore at least the institution of it must precede that council.

This being thus hitherto deduced, it will in the next degree of searching backward follow also, (if we can prove the received supposition of the church, touching the time of the *winter solstice* to have been long before this council, agreeable to that which here is shewed for the time of it,) that the first observation or institution of this feast, under the name of the *solstice*, upon the twenty fifth day, was also long before that council. Now as the *spring equinox* changed from the twenty fifth to the twenty first, so did the *winter solstice* of necessity change also, as is before shewed. But the *spring equinox* was also at least five hundred years before that council, upon the twenty first or twenty second of *March*, by the received supposition of them from whose direction the church cycles were principally

guided, that is, of the *Egyptians*, and especially of those of *Alexandria*; so is the express testimony of *Anatolius*, born and bred in *Alexandria*, but bishop of *Laodicea* in the time of *Aurelian*, about two hundred seventy years after our Saviour. He shews, that then the eleventh kalends of *April*, that is, the twenty second of *March* was the supposed *equinox*; which agrees well enough with that of the twenty first, if regard be had to that variation, which the six hours, out of which the leap-year is made, must of necessity be a cause of, as *Bede* ^f withal, in explanation of *Anatolius*, hath taught us: The same *Bede* also well admonishing, that it was *regula Niceno probata concilio, not statuta*, ^g to have that time received for the *spring equinox*. And indeed the very words of the epistles sent out of that council touching it, and the church stories plainly prove it to have been generally known and received in the church, both of the *west*, *north*, *south*, and part of the *east*, long before. In *Constantine's* epistle ^h to the churches of christendom, sent presently upon the council, it is expressed, that it was so generally received before; and *Ruffinus* speaking of the council, tells us, that, *de observatione Paschæ, antiquum canonem, per quem nulla de reliquo varietas oriretur, tradiderunt*. Nothing therefore can be clearer, than that the *equinox* of the twenty first or twenty second of *March*, (according to the difference before noted) was antient in the traditions of the church, long before the *Nicene* council: Otherwise they had as well in express terms innovated the *equinox*, as established uniformity in observing their *Easter* by it. Therefore also was the *winter solstice* about the twenty first or twenty second of *December* in the traditions of the church long before that council; then what follows hence, touching the institution of the feast which we enquire after, is, according to the former inferences, most apparent, for so much time as those testimonies reach back unto.

To go farther up in a third degree, it will be also justified, that this *equinox* (and by consequence, another *winter solstice* than that of the 25th day of *December*) was not only antienter than the *Nicene* council in the church-cycles, but also even equal to the apostles times. For although we find in the church story great differences of the primitive times touching the keeping of *Easter*, and divers cycles and canons made for it, yet those differences are chiefly about the day of the week whereon it should be kept, as between the *Tessareskaidecatites* and the churches of the *west*, but never (in any testimony of credit) about the diversity of supposition of the *equinox* that directs it, otherwise than according to that in *Anatolius*, which stands with the received time of the 21st of *March*, as is already noted. I say, in any testimony of credit. For under favour of the learned, I conceive not that attributed to *Theophilus* bishop of *Cæsarea*, and published at the end of

^d Comment. ad Ptolem. quadripartit. l. 2. com. 14. & videlicet Clavius ad cap. 2. Joh. de sacro bosco, f. alter quidem colurus, p. 297. edit. 4. 1603. ^e Apud Euseb. hist. eccles. l. 7. c. 26. ^f In epist. ad Wicred. de Paschate celebratione, tom. 2. ^g Wlfrid, apud Bedam, hist. Angl. l. 5. c. 25. ^h Euseb. de vita Constant. l. 3. c. 12. Soerat, hist. l. 5. c. 21. Nicephor. Callist. l. 12. c. 33. ⁱ Hist. eccles. 10. c. 6.

it, till in St. Chrysostom's age. For in the church story ^a it appears, that, under that emperor, *Anthimus*, bishop of *Nicomedia*, together with many thousand christians, were assembled to keep that feast-day, when as the emperor, or his fellow persecutor *Maximinus*, commanded fire to be put to the church wherein they were assembled, and that none of them should escape that would not sacrifice presently to *Jupiter Vistor*; whereupon they all willingly received the crown of martyrdom; and in the ancient martyrology of *Rome*, the passion of those martyrs is placed on the 25th of *December*, in these words, *Nicomediae passio multorum millium martyrum, qui cum in Christi natali ad dominicum convenissent, &c.* which also for the time is justified by the Greek ^b menology, where the words *ευναρθῆσας* (*Ἀνθίμος*) *ὅτι ὑπ' αὐτῷ ἐκάλυψα ἡ τῷ Χριστῷ λατρί, ἐν γὰρ τῷ αὐτῷ ἡ ἐκείνῃ τῷ Χριστῷ γενέσθαι εὐαγγελιστὴν αὐτῷ, &c.* that is, *Anthimus assembling in his church a multitude of christians on the feast day of Christ's birth, kept the feast with them, &c.* But indeed the Greek church calls this feast of the martyrs on the 28th day of *December*, as they do also on other days the ^c memories of St. *Eugenius* and St. *Anastasia*, (both which the western churches retain with this birth-day on the 25th) the one on the 22d, the other on the 24th day. But this was done by them only, because the more single honour might be given both to our Saviour's birth, and to those other names, being so divided: *Ut horum solennitatem* (speaking of those martyrs ^d *saith Baronius*) *celebratus agerent, eam transferunt.* As also among the *Jews*, a translation was often used of their feasts from one day to another, that two sabbaths or great feasts might not concur, as their ^e doctors deliver. Hence then it is enough also manifest, first, that by ancient testimony of the monuments of the church, this feast was thus observed before *Constantine*, or that council of *Nice* which was held many years after the death of *Dioctetian*.

But also, to look farther upon the times preceding this martyrdom, we shall find good testimony that it was taught to posterity to be kept so, even by the apostles, who knew it as a clear certainty while our Saviour was yet on earth: For though they ordained it not in those *constitutions* falsely attributed to them, or in any other written, yet might they teach it as a tradition to be received ever in the church; as they did the changing of the *sabbath* from the seventh day to the first of the week, the solemn renunciation of the devil at *Baptism*, the keeping of *Easter* on the *Sunday*, or the like, *quas sine ullius scripturae instrumento* (as ^f *Tertullian* says) *solius traditionis titulo, exinde consuetudinis patrocinio, vindicamus.* To this purpose, among St. Chrysostom's works in *Latin*, one homily is ^g *De nativitate Domini*, (as the *La-*

tin title is, for the Greek of that homily I have not yet seen) wherein he confidently, as elsewhere, teaches, that this day of *December* is the just day of that birth, and for his authority brings no less than St. *Peter's* testimony; *Petrus* (are the words) *qui hic fuit cum Johanne, qui hic fuit cum Jacobo, nos in occidente docuit;* Which hath plain reference to that before noted, out of his other long oration for the same matter, where he tells ^h us also, that in the controversies of that time touching this feast, such as defended it as what ought to be kept on this day, justified that it was *παλαιὰ ἢ ἀρχαία, ἢ ἀπὸ τῶν τοῖς διὰ Θεοῦ μεγάλων Γαλιλαίων ἱκανῶς καταδεδειγμένη, ἢ ἐπισταμένη, i. e. very ancient and from old time known, and famous from Thrace* to *Cadiz*, that is, in the whole western church. To these may be added that of *Evodius*, whom *Nicephorus* calls the *successor of the apostles*, and it is delivered, ⁱ that he was ordained by St. *Peter* himself in *Antioch*; that we may so distinguish him from that other *Evodius* bishop of *Uzalis* ^j in St. *Augustine's* time; He in an epistle touching the times of the passion of our Saviour, of St. *Stephen's* martyrdom, of the death of the blessed virgin, and the like, says expressly of her, (as the *Latin* is in ^k *Nicephorus*, translated by *Langius*, for neither have I the Greek of him) *peperit autem mundi ipsius lucem, annum agens quindecimum 25 die mensis Decembris.* And likewise in an old Greek author (the book being written about the time of pope *Honorius* I.) in the library of St. *Mark's* in *Florence*, express testimony is, *ἀποστόλος memoriae prodidisse Christum ex virgine natum Bethlemae 25 Decembris*, as *Albertus Widenstadius*, of his own sight, witnesseth in his notes on that impious book called *Mabmer's* divinity and brings also *Hegychius* his authority to the same purpose. And to these may be added *Cedren*, *Orosius*, and some ancient manuscript *fasti*, cited by *Cassianus* under *Cassiodorus*. And there is authority also, ^l that, however *Epiphanius* in his works have another designation of the day of this birth, (as anon is shewed) yet out of the monuments of the *Jews* he learned, and then taught, that this was the very day; which they say, was justified also by some writers brought to *Rome* from *Jerusalem* by *Titus*; which also is strengthened by that of St. Chrysostom, when he says ^m expressly, that in public records kept at *Rome* (in his age) the exact time of the *description* under *Quirinus*, spoken of by St. *Luke* (which could not but be a special character of the time of our Saviour's birth) was expressed; and then he goes on: *But what is this to us, saith he, that neither are at Rome, nor have been there, that so we might be sure of it? Tet hearken, saith ⁿ he, and doubt not; for we have received the day* *παλαιὰ ἢ ἀρχαία: ταῦτα ἐστὶν, i. e. from those which accurately know these things, and dwell*

^a Nicephor. Callist. l. 7. c. 6.

^b Ad Rom. xx.

^c Menol. ad distos dies.

^d Ad martyrol. 2. kalend. Jadi.

^e Talmud. massic. Rosh. Halicam.

^f De corona militis, c. 1.

^g Edit. Basil. tom. 2. hom. 19.

^h Edit. Savil.

ⁱ tom. 3. p. 512.

^j Suid. in verb. Ναῦαγῶν & Χερσαῖν.

^k Cujus nomini ascribuntur opera aliquot ad fin. tom. 10.

^l d. August. subjuncta edit. Lovaniensi.

^m Eccles. hist. l. 2. c. 3.

ⁿ Catholicus Armeniorum in legatione ad Armenios

male legitur 20 Dec. tam in biblioth. parisiensi edit. Paris. tom. 3. p. 164. quam in edit. Colon. tom. 12. part. 1. p. 891.

^o Nam Graece erat

20. Dec. quod videre est apud Jos. Scalig. in Hicog. chron. l. 3. p. 102.

^p Tom. 5. edit. Savil. fol. 12.

^q Ibid. p. 113.

at Rome : And that they ἀνωγειν ἐν παλαιῇς παρὰδοσις αὐτῶν ἐπὶ τῶν αὐτῶν ἡμῶν τῶν χρόνων διέπικυαν, i. e. *having from ancient time and old tradition celebrated it, have now also sent us the knowledge of it.* This is likewise confirmed by an old barbarous translation of what was taken out of *Africanus* and *Eusebius*, and first published in the noble *Scaliger's thesaurus temporum*, where the words are; *Aug. & Sylvano Coss. dominus noster Jesus Christus natus est sub Augusto 8 calendas Januariarum*; and then, in *ipsa die in qua natus est, pastores viderunt stellam*, *Chuae* 28, which should rather be the 29th, for so agrees the 25th of *December* to that of the *Egyptian Chioiac*, which the author means. And *Prudentius*, upon the day, supposing the ² old tradition of the concurrence of the *solstice* with it,

*Quid est quod arctum circum
Sol jam recurrens deserit ?
Christusne terris nascitur,
Qui lucis auget tramitem ?
Hic ille natalis dies,
Quo te creator ardens
Spiravit, & limo indidit,
Sermone carnem glutinans.*

And of later times the authorities are infinite.

These testimonies being compared with the consent of the fathers, that, about 400 years after *Christ*, have written that it was ancient, (as is already shewed) and being confirmed by the arguments made against the supposed later institution of it, out of the place of the received *winter solstice*, enough manifest the antiquity and certainty of this feast day, according as we now observe it; and that even from the age wherein it first brought forth the redemption of mankind. And to these we may add, the consent of christian churches ever since about those 400 years: For after that the *eastern* or *Greek* church of *Asia* had learned the truth of it from the *western* (as is delivered) this celebration of it yearly increased, and grew still more famous through christendom: So expressly *St. Chrysostom*, καὶ ἕκαστος ἐν ᾧ ἑκάστῳ ἔτος ἀυξημένη γίνεται, (saith ^h he) i. e. *every year it increased and grew more famous.* But indeed, because in some places it was not as yet so received, but that old erroneous opinions touching it (as it happens in like cases, and shall ¹ anon be more particularly shewed) still held their place, among some that were too wary to be brought to prefer truth newly discovered to them before their own errors; Therefore about 100 years after *St. Chrysostom*, it was expressly ordained by the emperor *Justin*, (if my author deceive not) that in every place of the christian world it should be thus observed: My author here, is *Nicéphorus* ^k *Calixtus*, who (as the translation of him is) tells us first of *Justinian*, that he *primum servatoris exceptionem* (that is, the hypatante, which in our *western* church is the purification

of the blessed virgin) *toto orbe terrarum festo die honorare instituit*; and then he adds, *sicut Justinus de sancta Christi nativitate fecit.* And according hereto are the *calendars*, and books of divine service, not only of the *western*, which are every where common, but of the *eastern* churches also. In the *menology* of the *Greek* church in *December*; Τῇ αὐτῇ ἐκδοχῇ πέντηκῃ καὶ σάκκῃ γίνονται τῷ Κυρίῳ, ἐν Οὐῷ, ἐν Σωτήρι. ἡμέρᾳ ἑκατῇ. i. e. *On the 25th of the same month, the feast of the incarnation of our Lord, and God, and Saviour, Jesus Christ*: and

Παρθενῇ Μαρίᾳ Οὐῷ ἑκατῇ γένετο πέντηκῃ

that is, *The virgin Mary brought forth our Saviour on the 25th day.* Other volumes of their divine service, as their *apostolo-evangelia*, and the like, enough shew this also. And for other churches which are not under the name of the *Greek*, as those of *Antioch*, or *Syria*, of *Ethiopia*, and of *Elcopsi* or *Egypt*, although we have not their calendars published with such exactness of the placing of their feasts, as we have those of the *Greek* church, yet have we testimonies enough of them all, whence we may collect that they agree with us in this anniversary celebration: As, first, for that of *Antioch*; they keep ¹ this birth upon the same day with us in their month *Canun* the former; and in *Asfragan* (as he is translated) we read in his enumeration of the *Syriack* months, *Canun prior 31. dierum, cuius 25. nox vocatur nox nativitatis*: So in the *Ethiopian* church on the 29th of their month ^m *Thachefsch* they keep it, which agrees always with the 25th of our *December*, though their intercalation falling before ours, (and in their *Mascaram*, or our *August*) changes the day of the week every leap-year into the next after what we keep: And for that of *Elcopsi*, we see in a short description of their account, received from an *Ethiopian* ⁿ priest, that their *almolad*, or the *feast of the nativity*, is placed against their month *Chiacb*, which answers to our *December*, and the succession of their feasts is just as in the *Syriack* account; and therefore reason enough is, that thence we collect the very days in both to be the self same. And to conclude here; What greater testimony can there be that it was received into the church, even from the disciples and apostles of our Saviour, than this, that it was so antiently observed, and hath been ever since so generally received through christendom? For so of the like things that great father, *St. Augustine*, pronounces; ^o *Illa quae non scripta, laith he, sed tradita custodimus quae quidem toto terrarum orbe observantur, dantur intelligi vel ab ipsis apostolis, vel a plenariis conciliis, quorum est in ecclesia saluberrima auctoritas, commendata atque statuta retineri: Sicuti quod Domini passio, & resurrectio, & ascensio in caelum, & adventus de coelo Spiritus Sancti, anniversary solennitate celebrantur; & si quid aliud tale*

¹ In hymn. ad calend. 3 Jan. eccles. h. 17. c. 11. emendat. temp. p. 670.

² Panegy. in diem natal. edit. Savil. tom. 6. pag. 112. ³ Widenontad. in epist. subnexa test. Syriac. & vide sis compurum Antioch. apud Jos. Scalig. l. 7. de ⁴ Jos. Scalig. dicto l. p. 650. ⁵ Apud Scalig. dicto l. p. 661.

⁶ VIL. ⁷ Hist. ⁸ Epist. ad Januarium l. 1. de occur.

occurerit quod servatur ab universa quacunque se diffundit ecclesia: All such things he supposes either delivered by the *apostles*, or ordained by *general councils*; For *councils* here, we have no testimony that they ordained it; therefore it rests by his argument, that we derive it from the eldest tradition that may be in christianity. But we end here this inquiry, and resolve with that old hymn of St. *Ambrose*, used in the service of this day in the church of *Rome*.

*Sic præsens testatur dies,
Currens per anni circulum,
Quod solus a sede patris
Mundi salus advenerit!
Hunc coelum, terram, hunc mare,
Hunc omne quod in eis est,
Auctorem adventus tui
Laudant exultat cantico.*

Neither find I any christian church that in the later ages hath otherwise celebrated it, save only that of the *Armenians*, who^p retained an ancient custom of confounding it with the *Epiphany*, and that to the time of *Mannuel Comnenus*, which is about four hundred forty years since, and perhaps yet do; of which confusion of those seals more in the last paragraph. But, because in these proofs hitherto declared, the common and most received grounds and reasons brought for it out of the holy text, and some other, are omitted; as also on the other side, some objections are made in later times against it, and that by such as bear even the greatest names in the state of learning; and some ancient testimonies also impugn what we have hitherto concluded: It follows next, (least the inquiry should seem done with too much negligence) that we both consider of those common grounds and reasons, and then shew why they were not here used; and furthermore, that we give such answer to those objections, and ancient testimonies, as that they may not at all hinder the credit of those arguments which before have so demonstratively justified it.

SECT. V.

The common reasons used out of the holy text to justify this day, and how they are mistaken, and therefore not used here; together with what some would prove from the scheme of this nativity.

OF those which have generally received it, the antients about four hundred years after it have strived to fetch *reasons* for it out of *holy writ* (being unhappily not contented to rely wholly on the tradition) and some of later time justify it by *astrological observations*; both being deceived; the first by misunder-

standing the text, the other by too much mingling their errors in the consideration of nature with the thoughts of this most *sacred birth day*. For those antients; They knew out of *Moses*, that the high priest did only once every year enter into the holiest place, or the *sanctum sanctorum*; and this is ordained to be on the tenth day of the seventh month, that is, the feast of *kippurim*, or *expiations* in *Tisri*: Then out of St. *Luke*, they supposed that the angel appeared to *Zachariah*, being high priest, and sacrificing there on the same day which they would make agree with the 24th of *September*, (although for the very day they have somewhat differed in the *eastern church*, and some have also^r supposed the conception in *October*, some in *November*) and that, on the night following, *Zachariah's* wife, *Elizabeth*, conceived St. *John Baptist*, as the angel fore-told him: From hence, according to the same evangelist, they accounted six months, at the end of which time, the blessed virgin *Mary* conceived; that time falls into the 25th of *March*, from whence nine months being accounted, (the common time of a birth) the 25th of *December* is found the very birth-day of our Saviour: This is the sum of the calculation used out of the holy text by the^t antients, although not without some confusion of months; while by reason of application of old *lunar* months to the *Roman*, which are *solar*, they confound herein sometimes *April* with *March*, and *September* with *October*.

That other sort which would prove it by *astrology*, shews us the *scheme* of this nativity, erected for the altitude and meridian of *Bethlehem*, to the midnight following the 25th of *December*, and then telling how wonderfully it is (by the rules of that art) agreeable to so wonderful a birth; and anticipating some part of the accusation they might justly look for, they declare themselves, that they mean not that any thing touching his divinity, his miracles, his holiness of life, or sending forth the gospel, depended at all on the stars: But they say, that as naturally he was of the best temperature, and exactest beauty, and had continual health, and so singular gravity of aspect, *sic etiam Deus optimus & gloriosus* (as *Cardan's*^s words are) *optima constitutione astrorum atque admirabilis generis illius adornavit*; Which constitution of the heavens, if the Almighty, (says he) had not to this purpose ordained to have concurred, and have been observed specially with this birth, one of these two things had happened; either that the very day, and hour and minute of the hour of that birth, had not been so constantly and diligently ever kept in the church; or else that all the significations in the scheme had not been adeo singularia (as he writes) *magnifica, gloriosa, & tanto concursu digna, tum vero omnibus quae successerunt de vitæ sanctitate, de morum gravitate, &c. adeo congruente, ut nil exactius possit excogitari*; and after the par-

^p Catholicus Armeniorum in legat. ad Arm.

^r Lev. xvi. & xxiii.

^s Stephanus Gobarus Trieth. apud Photium, cod. 331.

^t D. Chryostomus in sermone laudatorio panegyrico. Anastasius Antiochenus, Cedrenus, chronici Alexandrini auctor, &c.

^u Ad Ptoleum.

Terzabili. l. 2. text. 14.

ticulars largely declared. he too boldly concludes against such as justly enough impugn the art of *astrology* as groundless, with this, that they can now have nothing else left to speak against it, as *Ptolomy* teaches it, than this only, that they should perhaps object, that *Ptolomy*, to gain credit to the profession, wrote his whole *quadripartite*, according to the agreement between this scheme, (which it is most likely he never saw) and the parts of our Saviour's life denoted by it; than which, saith he, (as he well might) nothing can be more absurd. But out of this we may easily see, that such as stand upon those learned errors, cannot but think with him, that the very day and hour of this birth is fully confirmed by that scheme: Neither is there cause (so their grounds were certain) but that they might hence conclude also, that this were the very time, although no other testimony were extant of it: For what want they (in this pretence) of that knowledge of the ancient *Tarutius*, who was able (as he made some learned men believe) not only to foretell out of the scheme of a nativity, but also to find out of the circumstances of any life and fortune, the very point of the birth, and so frame the scheme itself? as *Plutarch* says he did, both in the search after *Romulus*'s birth-day, and the first foundation of *Rome*; And the finding the exact scheme, is the same with finding the exact time of the birth; which those astrologers, (it seems) think they have done, as well out of the congruity (as they suppose) of the scheme to what they apply it, as out of any testimony or tradition of the church.

But the truth is, that both this of some astrologers, and that other of calculation out of the *boly text*, deserve nor place nor name of reason to this purpose. For that of the calculation of the months out of the *boly text*; the chief ground on which it infits, and which being taken away, it all becomes merely vain, is, that of *Zachariah*'s being a high-priest, and in his sacrificing in the holiest place, or *sanctum sanctorum*, or in the oracle, as the names of it are varied; for a sacrifice in that place was only in that feast of *expiation*; that is, the tenth of *Tifri*, or seventh month; and this only by the high-priest; But it is most clear that *Zachariah* was no high-priest, but only one of those twenty four courses or stations of priests which weekly served at the temple. For *David* distinguished the posterity of *Eleazar* and *Ithamar* by lots, for the continual and daily service and sacrifice, into twenty four courses, and of those courses every one had a week for attendance, so that after every twenty four weeks, the first came to attend again; as also it was in the twenty four courses of the *Levites*, their weeks in this attendance always ending on the morning of the sabbath. Hereof is plentiful testimony, both in holy ^a writ and in the *Jew's liturgies*, besides *Josephus* and the old fathers, and it is fully and shortly

expressed by ^b *Eucherius*; *Erant fortis viginti quatuor* (saith he) *& sacerdotum, & Levitarum & janitorum, qui per totidem septimanas sibi ex ordine succederent, sabbato nova turma intrante ad officium, & post sabbatum, ea, quae proxima septimana ministraverat, domum redeunte*. In these twenty four courses the eighth is the family of *Abia*; Of this eighth course was *Zachariah* a priest, and was at this time in the week of his course burning incense in the temple, but not in the holiest place; So is the text of *St. Luke*; *a certain priest is: & quævis* ^c *Abia*, i. e. of the course of *Abia*, speaking of *Zachariah*; and afterward, *as soon as the days of his ministration were accomplished, &c.* What course or special days of ministration to be accomplished could here belong to the high priest of the Jews? But as *Mattathias*, and *Flavius Josephus* were ^d priests of the sons or course of *Jehoiarib* (that is, of the first course) so was *Zachariah* of *Abia*, or of the eighth. Neither was any high-priest of that age bearing any such name: But he that was high-priest at the birth was *Joazar*, and his predecessors were *Joseph*, *Mattathias*, *Simon*, &c. So that nothing is more certain than this, that *Zachariah* was not high-priest, although antiently very great names were decreed, while they took him to be so, as *St. Ambrose*, *St. Chrysostom*, *Anastasius* patriarch ^e of *Antioch*, and others expressly. *Zachariah* then being no high-priest, it plainly follows that their whole calculation of months here from the tenth of *Tifri* (in which only the high-priest entered into the oracle) proves nothing at all, but supposes merely false grounds; and so no proof of the certainty of this day can be extracted out of that holy story; and *Zachariah*'s sacrifice, for ought appears there, might indifferently be on any other day of the year. We omit here their supposition of an exact number of days for the natural time of a birth, which plainly can never be known. And in so clear a point thus much is rather too much than enough.

For that other reason or confirmation (as they would have it) out of *astrology*, doubtless, it is most vain (that we may speak no worse of it) both in regard of the art itself, and also of this application of it. For the art itself; though very many authors are of it, yet there is none extant of any great antiquity; and of those which are, very few agree to any purpose among themselves. *Ptolomy*, (who is the antientest of them, whose volumes of it are publicly extant, and lived about 140 years after our Saviour) ^f varied from what the *Chaldeans* before him had observed. The *Arabians*, as *Haly*, *Albunazar*, *Messalah*, the author of *Alcabiusius*, *Zabel*, and such more, have another doctrine from his. The *Latins*, as *Manilius*, and *Julius Firmicus*, neither agree among themselves nor with others; to omit the numerous differences that are in the many volumes of it written in the

^a 1 Paral. 24.

^b 1 Paral. 9. comm. 25. *Jos. apx.* l. 7. c. 11. & in *vita sua*, & 2 adv. Apionem.

^c 1 Maccab. c. 2. comm. 1. *Jos. in apx.* l. 12. c. 8. & in *vita sua*.

^d *Jos. Scalig.* l. 6. p. 509.

^e *Tetrabib.* l. 1. comm. 57, 58, &c.

^f *Nicéph.* patriarch. in *chronol.* &c.

^g *Ad l. 4. reg. c. 23.*

^h *Ms. apud*

middle

middle and latter ages. What certainty therefore can there be in that art, whose professors do make no other pretence, than long continuance of constant observation of signs, and things signified, to justify themselves; and yet in truth they have no testimony of such continuance of observation? And I trust no man will think that by rational collection only, (as in some other faculties) without a preceding and constant observation of many ages at least, it is possible to discover the nature of this or that star, or of the various positions of the heavens which every minute produces. Besides, without supposition of a certainty, not only of the degrees, but in some particulars of the minutes also, in which this or that planet is, the *astrologer* proceeds not; Yet it is most known that the *astronomers*, from whose noble search these suppositions are patiently taken by the *astrologers*, are herein even almost as differing among themselves, as the *astrologers* in their denoting of effects; Witness the difference of hours in calculation by the *Alphonsine* tables, from the *Ptolemaick*, made according to *Copernicus*, and of both from the restored motions of *Tycho Brahe*. And two of the planets, *Mars* and *Mercury*, which bear no small rule in the precepts of *astrology*, have hitherto scarce less concealed their motions and places in the heavens, than *Proteus* would have done his true shape. Yet still what the *astronomer* knows is uncertain, and ingeniously confesses to be so; the *astrologer* for the most part slothfully believing, and so fixing himself on that belief, takes for his infallible ground, and so deceives, and is deceived in his *aspects* (which he resolves *partile*, when they may perhaps be *platick*, and *platick* when they may be *partile*) in his *directions* in the points of his *Horoscope*, and of the other three of his figure, in his *lines*, in his *serpentine*, in his *conjunctions*, and in what else stands upon such exactness of calculation. But this is no place to speak more in particular of the art; enough hath been said of the vanity of it by *Mirandula*, *Alexander ab Angelis*, and others that have purposely written volumes against it. But, for the application of it to this of our Saviour's birth-day, it is both too groundless also, in respect of the hour to which the figure is erected, and withal impious, in the rest of the suppositions. For the hour, it is erected to midnight following the twenty fifth of *December*, for so much we must understand that which *Cardan* designs the time by; *Diebus 6. (saith he) horis 12. ante radicem astrologorum, qui anni initium sumunt in calendis Januariis*: This falls upon twelve of the clock of the night following the twenty fifth of *December*. But whence, I wonder, was *Cardan* so sure that this was the minute of the hour of the birth? Some indeed that among the antients erroneously placed it on the sixth of *January*, took the point of midnight to be the very minute, as we see in those collections out of *Stephanus Geo-*

barus, Tritheites in Photius. And in some part of the *Asiatick* churches (especially of *Syria*) the night of this day hath the name of the *night of the nativity*, which *Asfragan* remembers. But that testimony of the *nativity* cited out of an old *Greek* manuscript in *St. Mark's* library in *Florence*^a by *Widemonstadius*, says, it was *bora diei sexta*: *Hefychius*, there also mentioned, puts it on *bora diei septima*; with which agrees that chronicle of *Alexandria*, or the *fasti*^c *Siculi*, *ἡμέρα ζ. ἡ ἑβδόμη, i. e. the seventh hour of the day*. And though none of these are of credit enough to justify the very hour; yet, it seems, they all meant it a birth of the day, and not of the night, the hours of which they also note by the name of the hours of the night; neither can it be cleared by the holy text, whether it were in the night, or in the day. The angel in the night says to the shepherds, *For unto you is born this day*, (that is, *ἡμετέρα*) a *Saviour*, out of which words it were too much rashness to resolve whether the point of the birth were in the night, or in the day. If then *Cardan*, or his followers had been led by authority, they should have rather erected the figure (if at all they erected it) to the sixth or seventh hour of the day; that is, about twelve hours before their supposed time; and so the whole scheme had been changed, and *Aries* had been the *horoscope* instead of *Libra*, and *Capricorn* in mid-heaven for *Cancer*. Besides also, had the midnight following the 25th day, been the just time, those which in *Jewry* propagated the tradition to posterity, should (by all probability) have delivered it to have been on the 26th day of the *Julian December*, not on the 25th; for by the use of the *Jews*, their natural days^d were accounted from evening to evening, so that the night following, the 25th day was part (in their account) of the 26th day; as also the ecclesiastical account of days by the canon law,^e and that from ancient time. Neither can it for this reason alone be solved, unless advantage of a different account of days be taken from the old use in the state of *Rome*, wherunto *Jewry* was then subject; for in that state the natural day was from mid-night^f to mid-night; Yet according to that too it stands but indifferent to which of the two days the birth should be referred, being thus placed in the very point of midnight, which parts them. Besides also, the church of *Rome* hath taken it to have been in the night-time, preceding the 25th day; for they in the *vigil* of the *feast* celebrate the shepherds watching, and in the morning they have a special mass, with reference^g to the shepherd's visitation of our Saviour, at that time in the manger: So that according to their supposition, that scheme is not for the birth, but for a day after. In sum, the hour is every way uncertain. Their proof therefore being thus shewed groundless, in regard of the exact hour of the natural day (which is unknown) I hope there need not

^a Ad theolog. Muhamed. not. 12. quæst. 112. præter lit. sacras.

^b F. tit. de feriis, l. 2. & Pluarch in probl. Rom. 14.

^c Editioe Raderians, p. 532.

^d Quod die dist. 71. & extra. de feriis, c. 1.

^e Severus Antiochenus apud Anast. Sinait.

^f Ordo Roman. sed & videlicet Hugo. de S. Victor.

^g Francolin de roman canonic. c. 47. & synod in Trullo

be much said, to justify that the suppositions of dependence betwixt any working or significations of the stars, and that great and most sacred mystery of the incarnation, are most impious; although it were so that otherwise the traditions of that art had their place. As if either the common objects of sense, or uncertain collections of man's weak understanding, had so much to do with what, but at the best, we are able to apprehend by faith only. But *Cardan* had here in example to follow in those, who long before him, had impiously referred the beginning of christian religion to a certain number of revolutions of *Saturn*. And therefore also he makes that comet which in 1533. appeared in *Aries* under the northern part of the milky-way, and was (as he supposes) of martial, jovial, and mercurial quality, to denote the schisms and change of religion, which soon after fell in this kingdom under *Henry VIII*. For to *Aries* (says *Ptolomy*) is this island subject, as to a tutelar sign. And in this nativity also, that star, which *St. Matthew* speaks of, *Cardan* takes for a signifying comet, and places it in the ascendant; because, it seems, he read in the evangelist that the wife men saw it in the east. But there is good authority among the antients, and that by collection out of the holy text, that their seeing of it in the east, was a continual seeing of it ¹ for two years time, before the birth, in the countries, that lay east from *Jewry*; And doubtless also it could not be of any such height as comets are at the lowest supposed to be, neither could it have designed out a particular house in *Bethlehem*, if it had been so high as to have been carried either as stars or comets are, in the diurnal motion of the heavens. But enough hereof is already said against him by that great *Isycho Brabe*, with whose words ^m also we conclude here, that *Cardan* and his followers, *plus impie quam justa ratione, quomocunque tandem excusent, hoc asseverant, ut reliqua (pudet n. referre) quae astrologicis suis commentis hac de re inferunt, non adducam*.

There was reason enough therefore why neither of these first kind of arguments (whereof the one is taken from a groundless calculation of months in the holy text, the other from the vanities of astrology) were used among the proofs brought for the certainty of this birthday: For he that endeavours to establish a truth by arguments, should no less religiously abstain from false premises, than he ought carefully to meet with the sharpest objections; lest while the conclusion is of itself true, and would clearly appear so, if no other but true grounds were used to induce it; the credit of it be therefore still questioned, because in the foundations whereon it is so made to insist, there is such use of apparent falsehoods. At least, he rather seems too willing than truly able to prove, who so mixes truth, doubt, and falsehood, in deducing his conclusion, that either some of his premises first patiently received and credited by himself, and then offered in his arguments, have

indeed either much more need of proof, but are less proved by him than his conclusion; or else are every way false, and so utterly betray both the conclusion and his judgment. But we leave these, and go next (as it is before purposed) to the objections of late time made against what is hitherto concluded, touching the just day of this sacred birth.

SECT. VI.

The chief objections that are made against this days being the true time of the birth, with plain answers to them.

THE objections against this received opinion are chiefly two; the one taken out of the enumeration of those circular courses of the priests, divided into their twenty four families, as is before expressed; the other, from the circumstances of the time of the year of this birth, mentioned in holy writ. For the first. Divers chronologers, after they have according to their own fancies altered the years of account from our Saviours birth, (some making it one, some two, some three, some more years antienter than the common *Dionysian epocha* received in the church) then, that they may settle also the very day of the birth, or at least the time of the year wherein the day fell, they calculate by those weekly ministrations of the twenty four courses of the priests, to find out the week wherein the course of *Abia* (of which *Zachariah* was) ministered in the temple; for then would it follow, that the time of *St. John's conception*, from which the conception, and birth of our Saviour was accounted, would nearly, if not exactly be found also. For the text is, that after those days (of his ministration) his wife *Elizabeth* conceived, and hid herself five months, &c. For example, some here supposing in their chronology that the birth was two years before the vulgarly received time, and in the 4711 year of the *Julian* period, thus work in calculation to find out the time of the year when our Saviour was born; They observe first, that *Antiochus* polluted the temple, and discontinued the daily sacrifices, and so by consequent the continuance of those courses; Then, they say, that *Judas Maccabeus*, upon the new dedication of the temple re-continued the daily sacrifices, and by a like consequent restored the courses, and in restoring them began with the first, that is, the course of *Jehoiarib*, and this in the 25th day of the Hebrew month *Cassien*, in the 4549 year of the *Julian* period, which agrees with the 24th of November of that year; this day fell on Monday, so that the continuance of the course of *Jehoiarib* was (according to the first constitution) till the morning of the sabbath following, the next sabbath before this new dedication of the temple falling so on the 22d of November: From this renewing of the courses they thus reckon; From the course of *Je-*

¹ Albumazar de conjunct. differ. tractat. 2. & apud Rog. Bacon in opere majiori ma. 2d Clem. p. p. 4.
1. edit. a Paris, in edit. Lovanien. tom. 10. p. 431. Nicéphor. Calist. l. 1. c. 13.

² D. August. in serm. Programm. de nova stella. p. 136.

Jehoiarib,

boiarië, being the first, to that of *Abia*, being the eighth, must intercede forty nine days; so that the course of *Abia* began on the 10th of *January* in the 4550 year of the *Julian* period. Having then before supposed that the year of the birth was the 4711 year of the *Julian* period; and that the conception of *St. John* was in the year preceding, that is, in the year 4710; they account over the whole cycles of those twenty four courses that intercede from the course of *Abia* in *January* of the year 4550, and thence observe at what time the course of *Abia* falls again in that 4710 year of the *Julian* period. Thus they find that in those 160 years, 349 cycles of those courses being past, the course of *Abia* being the last in this computation, (which begins at the next from it) of the 349, falls exactly to begin upon the 21st of *July* (being the *sabbath*) of the year 4710, and so ends upon the 28th of the same *July*, that is, the morning of the *sabbath* following. By which they conclude, that upon, or immediately after, the 28th of the same *July*, *St. John* was conceived, according to the text, that tells us, *After the days of Zachariah's ministration, &c.* This being granted, it would follow, that the birth of our Saviour (according to the vulgar calculation) from the time of *St. John's* conception) would be in *October* or *November* of the following year; that is, of the 4711 of the *Julian* period. Others by another liberty in this kind of numbering, placing it in *September*, others otherwise, while they fetch their arguments out of the revolution of these courses.

The other objection, that is, from the circumstances of the time of the year of this birth, is out of the holy text; where it is written, that there were shepherds in the same country abiding in the fields, $\alpha\gamma\lambda\omega\sigma\alpha\tau\epsilon\varsigma\ \tau\acute{\iota}\varsigma\ \kappa\upsilon\alpha\lambda\alpha\tau\epsilon\varsigma$ $\delta\epsilon\ \tau\acute{\iota}\varsigma\ \tau\epsilon\tau\epsilon\lambda\epsilon\iota\omega\tau\epsilon\varsigma\ \alpha\upsilon\tau\omega\tau\acute{\iota}\varsigma$, i. e. and keeping watch over their flock by night, and this at the time of the birth. This, say some, of all times fits not the midst of winter, or *December*, but rather the spring, summer, or autumn, when the temper or heat of the night permit both sheep and shepherd to be in the fields.

But neither of these reasons have any weight against that received tradition of the 25th of *December*; First, for that of the twenty four courses; It were something indeed if we exactly knew with which of the courses *Judas Maccabæus* began his instauration of the sacrifices; for supposing then that from this beginning and new dedication until *Zachariah's* ministration, no disturbance of the continuance of those courses had happened, and also that we had the just number of years fully agreed upon from the same dedication to our Saviour's birth, it were such an argument as could not in any kind be exceeded, so that we also otherwise allow the common calculation of time, that was used by the fathers out of *St. Luke*, in regard only of the distance between the conception of *St. John*, and the conception and birth of our Saviour. For

St. John was, as they commonly agree, conceived presently upon the end of *Zachariah's* ministration, and this conception once fixed were a constant epocha (according to the vulgarly received interpretation of *St. Luke*) from whence, the time of the year, at least of our Saviour's birth-night, may be clearly collected. But, on the other side, if we fail in the certainty of the beginning of the courses, who fees not that nothing can be concluded out of them to satisfy such a judgment, as dares not rely upon mere conjectural inferences, without an open clearness in their antecedents? Now for that matter, no old stories have mention of the name of that particular course with which *Judas Maccabæus* began; but they only shew the new dedication, in which it may be granted that there was an instauration of the courses; But whether by beginning again (as these suppose) with that of *Jehoiarib*, which is first in *David's* distribution, or with that of *Jedaiah*, being the second, or with any other of the twenty four, nothing is left to instruct us; And we know that through *Antiochus* his profanation of the temple, the courses were discontinued in the 143 year from *Seleucus Nicanor*, and that upon the 25th day of *Casteu*, and that, upon the same day, five years after, the sacrifices, and by consequent the courses, were restored. But it is neither known what course was then in ministration, when *Antiochus* profaned the temple (for we have no certain epocha from whence that can be deduced) or with what course the first week after the new dedication was served: How then is it possible to reckon by the cycles of those courses, and so find the just time of this of *Abia*, or the eighth? No more than it might be possible that one, who knew only that we had twelve months in the year, but withal were wholly ignorant when the first began, could yet tell at what season the eighth fell? And for their conjecture of the beginning with the course of *Jehoiarib*, because that was the first in *David's* distribution, it is both in itself a very weak one, and perhaps expressly against the strictness used among the Jews in observation of those courses. For besides that, no testimony at all assures us, but that any other of the courses, as well as that of *Jehoiarib* (according to the opportunity of time, and fitness of persons) might be the first at that new dedication. We have it confessed by the greatest of them, which this way impugns the received tradition, that the certainty of the cycles of those twenty four courses was so carefully kept so long as the sacrifices continued, that no one course might supply the room of another, against the order of succession in their cycles: For example, if that of *Jehoiarib* were for this week, then of necessity that of *Jedaiah*, being the second in the cycle, must be for the week following, and that of *Harim* for the third week, that of *Seorim* for the fourth, and so the rest according to their succession in the cycle; And this inasmuch, that if (for the purpose) that of *Harim* should have missed at the temple in the

* D. Luc. c. 2. comm. 8.
c. 12.

* Lib. Haimoneorum, c. 1. 20. & 4. 51. Epit. Jafonis c. 10. §. Item Joseph. Ben Gorion, l. 3.

third week, after the end of the course of *Jedaiah*, yet might not the service be supplied either by the following course of *Seorim*, or by the continuance of that of *Jedaiah*, neither might any other minister in the temple that week, nor might that of *Seorim* (being the next in the cycle) begin till the sabbath following. And to this purpose also, ⁹ they bring that old canon of the *Jews*, כל כהן וכל לוי שניכנס בעבודת הבריו, i. e. *Every priest and every Levite that puts himself into the ministration of any of his fellows is punishable with death.* And by this also they understand, that in *Josephus*, ⁹ where he says that the daily sacrifice failed upon the 17th day of the Macedonian month *Panemus*, (which was the 17th day of their *Tammuz*, whereon the *Jews* keep a solemn fast to this day) and that this was ἀντιστοιχία, i. e. *for want of those which should minister*, as if only (as they understand it) the reason were, because the course of that week failed, and might not be by their canons supplied either by the preceding course, or that which was the next week to succeed, nor by any other. This being thus confessed by them, they should otherwise have searched in their way of proof, out of those courses accounted from the *new dedication* under *Judas Maccabaeus*: For upon this supposition, they should first have been sure what had been the last course at the time of *Antiochus* his profanation; then should they have reckoned over the cycles from that course, and so have observed upon which of the 24th, the ministration, beginning on the sabbath, being the 23d of *Cassius*, in the 143th year of *Seleucus*, or *Dhilkarnun* would happen; and thence might they have reckoned forward to search out that of *Abia*, in this question of *Zachariah's* ministration. For if there were such a careful avoiding of supplying the course of one by another; then follows it plainly, that it was as certainly known at the time of *Antiochus* his profanation, to which of the courses the ministration, five years from that week, would necessarily belong, as it was then known, what course was in the present ministration: For example, admit five years were complete from the end of the week of the profanation and discontinuance of the courses under *Antiochus*, to the end of the week of the dedication; and suppose also that the first course, that is, of *Jehoiarib*, had served in the temple in the week of profanation, then must it necessarily first follow, that the course of *Jedaiah*, or the second, must have served in the week following; that is, the first week of those five years. Now in those five years (taking in about a day to make the numbers round in the example) we have 261 weeks, (and 261 weeks are ten complete cycles of those twenty four courses) and twentyone weeks of advantage to go on with to make an eleventh cycle: If then the strict observation of keeping every course to his own week (which was as well foreseen always by the revolution of

those cycles as any immovable feast, or the dominical letter in our ecclesiastick accounts is fore-known) were in such use, then clearly what course soever should have served in the first week after the profanation, that and none other should have served in the sixth week of this eleventh cycle, which in our example falls to that of *Jedaiah*. Reckon with him on, in this eleventh cycle, till the 21st course (as the weeks require) and then the course of *Gamul* is proper to the very week of the new dedication; And this way, if the course which served at the profanation were known, it were easy to find which of them should, by that tradition of the *Jews*, have served at the dedication: But when we neither know which of them served at the profanation, nor which at the dedication, what rashness is it to rely upon a bare conjecture, and that also such an one as is adverse to that received tradition of the exact keeping of the cycles, and is in substance confessed to be so by such as have used it? These things thus considered, it follows, that they which insist upon this argument, taken from the beginning of the twenty four courses in that of *Jehoiarib*, under *Judas Maccabaeus*, fail in their ground, and prove nothing at all against our received tradition. The weakness of their objection also is therein increased, that their chronology in it is so uncertain, that they know not clearly in what year to fix the birth; some of them making it one, some two, some three, or more, years before the common *epocha*, and this also upon conjecture. But while they vary so much in the year, they have little reason to be confident (out of their own grounds only, wherein they refuse this so ancient tradition) that they can in their supposed years be sure of the very day, of which no other old testimony instructs them, than either what we have before remembered, or that which shall presently be both delivered, and so cleared also, that it may not have weight against what is already justified. And it might easily fall out, that the certain year of the birth might be forgotten, or at least not so remembered, or the memory of it not so preserved, as that later posterity could clearly have notice of it; and yet that the day of the month on which the birth fell, might, by the continuance of tradition, (as it hath been) be clearly known. The anniversary celebration gave the day certain to posterity, which could not thence find any thing to rectify them in the exactness of the year, as we see also in an example of the *Roman* state. They clearly knew that the birth of *Servius Tullius*, who was the first that was king there against the will of the common people, fell upon the *nones* of some month, but they knew not at all of what month, nor in what year, for ought appears: And therefore they avoided public meetings in the city upon the *nones* of every month through the year, that so they might be sure to avoid them (as supposed most unlucky to the state) anniversa-

⁹ Videlicet imprimis Jos. Scalig. 1529. canon. l. 3. p. 298. c. 12.

⁹ וְכָל אֲלֹהֵימָה. c. xxi. p. 25.

⁹ Macrobius l. 1. Saturnal.

rily on his birth-day. This anniversary avoiding public meetings, or fairs, on the *nones*, continued the certainty of his being on the *nones* of some month, though the month were unknown; and so did the anniversary celebration continue from the disciples the day of the month, though perhaps the year be not clearly enough certain. And there was other reason also why the certainty of the year might be unknown: For there is nothing that preserves such a certainty, but either such *express testimony* of authors as cannot be questioned, or else a *continuance of vulgar supputation of time* from, or very near from, the time of the birth itself. But we have herein had neither of these. For the first, that is, *the testimony of old authors*; they vary in the years of *Augustus* and of the *consuls*, which are the characters by which they design it; and besides, they are not of such antiquity as that we can clearly rely upon them; And for that of *vulgar supputation of time*; the common account either in instruments, letters, rescripts, or the like, was not at all made by the years of our Lord, till between five and six hundred years after the birth; that is, after the time that *Dionysius* made his cycle of five hundred thirty two years, by multiplication of the *cycle of the sun* into the *golden number*, and from that time brought ¹ in (according to his own suppositions) the supputation of time by the years of our Lord. For before that age, the *christian* use was, either to note times by the *consuls* of the year, as the ancient course of *Rome* was, and as we see in old *general councils*, and in rescripts of the emperors, in the codes of *Theodosius* and *Justinian*; Whence also *Constantine* ordained it for a ^m law, that if any edicts or constitutions of the emperors should be found *fine die & consule*, they should be held of no authority; Or else by that *aera* (commonly called *aera Hispanica*) which began under *Augustus*, thirty eight years before the *Dionysian epocha* of our Saviour, and was chiefly used in *Spain*; as we see both in the titles of the old councils of *Sevil*, *Bracara*, and *Toledo*, and in inscriptions of that country; But also it was in use too in *Africa* and *France*, as we may collect by the titles of most of the councils of *Carthage*, of *Arles*, and *Valence*; unless we suppose that *Isidore* (from whose volume of councils we have these) being a *Spaniard*, used the supputation by that *aera* in the titles, without warrant of the original copies. But we have in the very context of the acts of the fourth council of *Arles* use of this *aera*; which was also in the accounts of time at *Rome*, as is seen in the epistles of pope *Leo*, subscribed with the years of it. Others denoted the years by an account from some regaining of their freedom; as those of *Antiochia* did from an *epocha* forty eight years before our Saviour, which is the *ἡμετέρας ἐλευθερίας ἁρτυρία*, so frequently spoken of in *Evagrius's* church story; or

from that of *Seleucus*, or *Dhilkarnun*, beginning after *Alexander's* death. Others from the year of the creation, as the *Greek church*: Others from a time that fell 283 years after our Saviour, (as those of *Egypt*, and the adjoining churches) that is, from *Dioclesian's* persecution; which, in *Egypt* and *Ethiopia*, is to this day ^a retained; and by the christians, that use *Arabic*,

called, *تاريخ الشهداء* *tarik alshuhada*, i. e.

the epocha of the martyrs; and among the *Ethiopians* *ዓተ:ዓክተ: anath michiath*, i. e. *the year of grace*. So was also that of *Spain*, in common use there, till somewhat above three hundred years since it was by special constitution abrogated, and the year of our Lord made the beginning of the account of time; and this alteration is by the *Spanish* lawyers referred to *John*, the first king of *Castile*. *Duravit (aera) usque ad tempora regis Johannis primi* (saith ^b *Lopez*) *qui iussit apponi annos natiuitatis Domini*. So also writes *Azevedo*, ^c so others of them; Whence it appears, that antiently, till long after our Saviour, no account was vulgarly made by the years of his birth, in which the true year of it might be by a continual tradition retained: And also, that although about the time of *Justinian* (that is, when *Dionysius* began his cycle) the course of reckoning from this birth was brought into use, yet it was received but in few parts of christendom, and that principally within *Italy*, in the instruments, it seems, of the court of *Rome*. And it is observable here also, that with us in *England*, however our antientest stories of the time since christianity, both in *Saxon* and *Latin*, are deduced by distinction made out of the years of our Saviour, and that according to the court of *Rome*; our church proceedings and instruments belonging to that jurisdiction have antiently had, and still retain an account by those years; Yet the characters of time, both in the pleadings and instruments of the secular jurisdiction, hath been ever, and is chiefly by the years only of our *sovereigns, kings or queens*; so are our records distinguished, of pleas, patents, parliaments, and the like; so are the instruments of conveyance, and what else is of that nature: In which, doubtless, the antient course of computation is so retained, that it shews us, that none other hath been ever proper to the practice of our secular jurisdiction. And although indeed at this day clearly, it be not cause of exception, or erroneous, if the times in a pleading or instrument be distinguished only by the year of our Lord, yet antiently it was much stood upon under ^d *Edward III.* when in a writ of annuity brought by the prior of *St. Trinity of London*, against an abbot; the prior declared upon a composition, bearing date in *such a year of the Lord*, and the defendant's counsel took exceptions to it, supposing that none should declare, at the common law, of

¹ Bede de temp. rat. c. 45.

² C. Theodos. de de conflit. princ. l. 1. si qua. p. 461. & 629. ³ Marian. de reb. Hispan. l. 1. c. 24.

Recopil. l. 2. tit. 1. de las leys.

⁴ 23. Ed. 3 fol. 21 b. 24.

Ed. 3 fol. 97. a. & 53. b.

^a Jof. Scalig. de emendat. temp. lib.

^b Ad l. 14. parit. 3. tit. 17. de las elecciones.

^c Ad l. 1.

or he that extracted the *feder olam zuta* out of the *feder olam rabba*, where this is reported from rabbi *Jose*; Although both these authors speak most particularly of the second destruction of the temple, but they abstain from this of the course then in service, as from what had been without warrant delivered by rabbi *Jose*, who indeed had learned from an old groundless tradition, that at the first destruction, under *Nebuchadnezzar*, the course of *Jeboiarib* served in the temple, and that this second destruction was upon the same day of the same month which the first was on; and because he would have all in both destructions alike, he added also, that the course of *Jeboiarib* served now at the second destruction, when indeed no service at all was in the temple, and that the sacrifices and ministrations were ended. So, before the destruction, other testimony is in the *Jews* liturgy, which confirms that of *Josephus* to be infallible; On the fast of the seventeenth of *Tamuz* they sing *היום נכחד ההיכל וההיכל יום הדין* i. e. *because in this day the continual sacrifice ceased, this day the continual sacrifice was taken away*. If the sacrifices then, and the courses with them (for the one of them is not without the other) ceased on the seventeenth day of *Tamuz*, what credit is to be given to him, that tells us what course ministered in the sacrifices, three weeks after? Which being so cleared, there is nothing remaining in the cycles of those courses that can impugn the received tradition of this birth-day.

And for that other argument of the *shepherds watching in the night*, what makes that against this of *December*? As if shepherds might not properly be in the fields watching their sheep in the night at the midst of *winter*, especially in so warm and continually temperate a climate: For, although in *Italy* the precepts of husbandry were, that in the winter their sheep should be kept in cotes^a rather than in fields, yet they had their winter-feedings abroad also; and the climate of *Bethlehem* is of less latitude by ten degrees than of *Rome*, and is also so much the more temperate always; and even in our climate, that is much colder than either of them, we have watching of sheep, feeding, or remaining in the fields, at this time of the year. The rest objected out of the circumstances of time, as that of the winter, being an unfit time to make a general description in, or that the birth of the redeemer of all men should be on that day, on which the creation of the first man was (that is, as they without ground suppose, on the twenty fifth of *March*) and such like, are far more vain, and not worthy of mention. These things being thus at length cleared, we need not, I trust, be at all moved by the opposition of those learned men, *Beroald*, *Paulus de Midleburgo*, *Juslyga*, *Joseph Scaliger*, *Kepler*, (although he stands for the same time of the year, but relies not on the tradition of the day) *Wolfius*, *Hospinian*, *Lidiat*, *Calvisius*,

Casaubon, and the rest that have both made it a question, and shewed also their opinions against it.

S E C T. VII.

Some other opinions among the antients touching it, and how some of them may agree with what we have received, and the rest are of no weight against it; and there more especially of the antient confusion of this feast with that of the epiphany.

BUT we have hitherto omitted the different opinions among the antients, touching the day of this birth; which shall be therefore next collected, and then also it shall be shewed, that they bear no weight against what is before concluded. Those opinions (as they are delivered) are various, and chiefly five. The first is of them, who taught it to be on the 25th day of the *Egyptian* month *Pachon*, which is the 20th of *May* in the fixed *Egyptian* year. For after that the *Egyptian* month *Thoth* was fixed in the end of *August*, and so the rest of the following months (thirty days being allowed to a month, which with the five *επαγόμενα* make up the whole common year) both the fathers, and the most of prophane writers commonly used the *Egyptian* months as fixed, and not as they are wandering in the years of *Nabonassar*, in the *Almagest*. This of the 25th of *Pachon* is delivered in *Clemens Alexandrinus*, that lived some eighty years from the time of the apostles. *Εισὶ δὲ ἡ (saith he) περιεργότερα τῇ γένεσι σωτῆρος ἡμῶν, ἢ μὲν τὸ ἔτος, ἀλλὰ καὶ τὸ αὐτὸν περὶ βίβλης τῆς ἐκ ΚΗ' Αὐγούστου ἐν πέντε καὶ Πάχων καὶ ἀκτῶν* i. e. *There are some also that more curiously denote, not only the year, but the very day also of the birth of our Saviour; which they say was on the 25th of Pachon in the 28th year of Augustus; where the account is not by the common years of Augustus deduced from the death of Julius Caesar, but by the years that were past from the taking of Alexandria, and the death of Anthony*. The second (that seems to differ here) is that in the chronicle of *Alexandria*, where it is delivered, that the birth was on the 25th day of the *Egyptian* month *Choiac*, which is the 21st of the *Julian* *December*. The third is of those which supposed the day to have been ¹ on the 24th or 25th of *Pharmuthi*, (that is, the month preceding *Pachon*) which agrees with the 19th or 20th of *April*. And with this may be reckoned the fourth, which is found in *Mabomet*, that says it was upon the 23d of the *Arabic* month *Ramadhan*, but in what year he designs not. But however in the *Hagaren* or *Arabian* year, this cannot come near our *December*, for according to that year, the month

^a Virgil Georg. 3. & vide Co'amel. l. 7. c. 4. Varro. l. 1. s. c. 2. & Pallad. in Novemb. die natali. c. 21. ^b Edit. Rader. p. 513. ^c Clem. Alex. Stromat. 1.

¹ Stromat. 1. ² Videbis Censorin. de

Ramadhan falls in *June* and *July*, about the time of our Saviour's birth. *Vigesimo tertio die Ramadban* (are the words in the translation of a most impious book of his long since done by *Hermannus*) *natus est Christus filius Mariae, orationes Dei super eum*. For the *Mahumeds* celebrate our Saviour as a great prophet, and his birth, of the virgin *Mary* ^k also, is related in their *alcoran*; although with much difference from the holy story, as most other things are which occur there with reference to either of the testaments. A *fifth* is of those which thought the day to be the 11th of the *Egyptian* month *Tybi*, that is, the 6th of our *January*, on which we celebrate the *epiphany*: So *Epiphanius*, *ἡ γενεὴ ἡμεῶν, τὸν ἑσπέρην ἑορταζόμεθα, τὴν ἡμέραν ἐκκλησιασμοῦ μωυσεῖς καὶ ὁ Ἁγίου τῆς Τεβι ἀδικατῆ* i. e. the birth-day (of our Saviour) that is, the *Epiphany*, fell upon the 6th day of *January*, being the 11th of the *Egyptian* month *Tybi*; which opinion is remembered by *Stephanus Gobarus* ^m *Trithemites*, where yet the 5th of *January* is in stead of the 6th, as also in some places of some editions of *Epiphanius*: But *Stephanus* plainly meant the 5th day, for he interprets it by the eight *ides* of *January*, which is the 6th day; And here-with agrees the common opinion of the ancient church of *Egypt*, which kept the feast of the birth upon this 6th of *January*, so confounding it with the feast of his baptism: *Cassian* ⁿ relates so of them; *Intra Aegypti regionem mos iste antiqua traditione servatur, ut peracto epiphaniarum die, quem provinciae illius sacerdotes, vel dominici baptismi, vel secundum carnem natiuitatis esse definiunt; Et idcirco utriusque sacramenti solennitatem, non bisariam, ut in occidentis provinciis, sed sub una diei huius festiuitate concelebrant, &c.* And other ^o testimonies are of this observation of the feast on that 6th day with the *epiphany*. But there is none of these opinions but that may be either so interpreted, that they may stand with what is before delivered of the 25th of *December*, or else so shewed to insist upon false, or no grounds, that they are no authority at all against it. For the first, which casts it on the 25th of *Pachon*, and is very ancient, it may be well interpreted to agree with this of *December*. For in consideration of it, we must, first, remember that according to the old *Jews*, there was among the fathers of the primitive times, a reckoning of their months, as well by the order of enumeration, as by proper names; so that *September* and *October* were known as well by the names of the 7th and 8th months (as also their names denote) as by their names themselves, being accounted from *March*, which was the first. But the *Greek* fathers frequently took *April* instead of *March*, for the first month of the year, as we see expressly in ^p *St. Chrysostom*, in *Anastasin* ^q patriarch of *Antioch*, in those constitutions

^r attributed to the apostles in ^s *Macarius*, in ^t *Stephanus Gobarus*, and in other testimonies of the ancients, where the *Julian April* is made the first, as the *Hebrew* month *Nisan* was; And therefore also they had the very day of this birth known by the name of the 25th day of the ninth month *December*, being the ninth from *April*; And this kind of noting it, is like enough to have deceived those which said it was on the 25th of *Pachon*; for *Pachon* is the ninth month reckoned from *Thoth*, being the first among the *Egyptians*, as *December* is, being accounted from *April*; So that when the tradition was delivered in those terms of the ninth month, no designation being of the account of the months, nor of what months were meant, it was perhaps rashly received by some, and instead of the 25th of the ninth month in the *Roman* year (according to that account of the fathers) it was apprehended to be, and so by mistaking placed, on the 25th of the ninth of the *Egyptian* year; Neither is this conjecture for interpretation of the original of that mistaking so new, but that others, and those which are very learned and judicious, have also used it. And by a like or easier way may the *second* (which is before related) be understood: For though the 25th of *Choiac* fall upon the 21st of *December*, taken strictly according to the *Egyptian* account from the first of *Thoth*, being the 29th of *August*; yet in regard that all *December*, saving the last five days, falls within *Choiac*, and so the very birth-day in the same month, that is, on the 29th of *Choiac* (which truly answers to the 25th of *December*) it is reason enough that we suppose that *Choiac* was taken there for *December* itself, so that the 25th of the one and of the other, went with the author for the same day. And such examples are frequent, in applying of *Hebrew*, *Arabick*, *Greek*, and *Egyptian* months to the *Roman*; and therefore also the translator of that chronicle hath well expressed it (presuming upon this reason) by the 25th of *December*. For the *third* and *fourth*; neither of them having any ground at all, are as easily and as reasonably denied as affirmed, nothing is brought to justify them, therefore as little will serve to confute them; especially that of *Mahomet* can have little weight here, when as he is so false in the whole relation of the birth of our Saviour, in his *alcoran*, that he makes the virgin *Mary* to be the same with *Mary*, or *Miriam* ^u the sister of *Aaron*; and talks of *Zachariah's* being three days only dumb; and of our Saviour's precepts given as soon as he was born, touching *prayers* and *alms* (as *Robert of Reading*, that antiently translated the *alcoran*, turns it; but the word being *زكاة*, *zachawath*, frequently occurring in the *alcoran* for *alms* or good works, is in that place by *Postellus* ^v translated *tythes*; it being indeed in the *Arabick* testament ^w ex-

^k *Alcor*, *Azoar*, *Contacuzen*, *ἡμεῶν*, *καὶ ἡμεῶν* *Μαμαῖος*, 2. & 4. & *Postell*, de orbis concord. l. 1. c. 3. & l. 2. c. 2. ad cap. *Eltur*.
^l L. 2. tom. 1. haeret. 41. its reman ad ext. l. 2. ^m *Apud Phot.* cod. 331. ⁿ *Collat.* 10. c. 2. & videlicet *Orig.* *homil.* de div.
^o *Uic.* *apud Scalig.* de emend. p. 109. ^p *St. Hieron.* ad *Ezechielem* l. 1. D. *Chryf.* tom. 1. edit. *Erasmiana* p. 119. ^q *In panegy.* 5. *synops. sup.*
^r *Uic.* *apud Scalig.* de emend. p. 109. ^s *Lib.* 4. *syn.* 29. *Cedren.* p. 141. &c. ^t *Homilia* 5. ^u *Apud Photium* cod. 331.
^v *Hierard* & *Keplerus*, vide *Kepler*, de anno natali c. 11. ^w *Azoar*, 5. & 19. ^x De orbis concordia l. 2. c. 2.
^y *Epist.* ad *Eduard.* c. 7. tom. 4.

preſently uſed alſo for *ſiſt fruits*) with other impudent falſhoods like the reſt, which are every where in that abſurd volume of his law; and there alſo the ſeaſon of the year is noted by a tale of the bleſſed virgins having dates preſently upon the birth from a tree, which (as the *Muſulmans* ſay) * is yet growing. But for the *ſiſt* opinion, which is from confounding the feaſts of the *epiphany* with this of the birth, (a cuſtom alſo retained in the latter ages ² in the churches of *Armenia*) and made by *Stephanus Gobarus Triciteſtes* in his contrarieties of ancient opinions of the church, to be the main and as the only one that croſſes that of the 25th of *December*; However, it be ſo often taken clear in *Epiphanius*, and ſally alſo affirmed by the general, or patriarch, of the *Armenians*, that all churches had obſcured it ſo even from the apoſtles: Yet doubtleſs there is great reaſon that we ſhould think that this conſuſion began both without any ſufficient ground, and alſo was bred by ſome ſuch miſtakings as may be obſerved to have been in their conſideration, both of the name and time of the feaſt of the *epiphany*. For their grounds (beſides what is in miſtaking the name and circumſtances of the time of this feaſt) there appears none that hath any colour of power, or truth, among thoſe which have ſo noted it. But for the name firſt of the *epiphany*; The feaſt being antiently obſerved for the ³ *baptiſm* of our Saviour in *January*, as at this day, and that in the *eaſtern* churches, before ſuch time as they had learned of the *weſtern* the true day of the birth, they ſuppoſed firſt that the tradition of this feaſt under the name of *Ἐπιφάνεια*, or *Ἐπιφάνια*, might well denote the birth itſelf, and ſo teach them that on this very day our Saviour was born; For the birth being of it ſelf the firſt apparition of the Son of God in the fleſh, and *epiphania* denoting in the language of the then both paſt and preſent ages the *apparition of a deity* (as is eſpecially noted alſo by the moſt learned *Cafaubon* ^b) they took it at length here to denote alſo the firſt *apparition* of our Saviour to the world, and that in this feaſt day kept on the 6th of *January*; and ſo concluded that this was the birth-day. Now for the circumſtance of the time of the *epiphany*; this conſuſion of the feaſts doubtleſs was much confirmed to them by an interpretation of a paſſage of *St. Luke*, where the baptiſm of our Saviour (which is celebrated in the *epiphany*, although *Epiphanius* place that alſo upon another day in *November*) is delivered to have been, when he was *ὡς ἐν τῷ τριάκοντα ἀποχρῆσθαι*, i. e. *beginning to be about thirty years of age*; which words are interpreted by ſome as if he had been of thirty complete, and beginning to be thirty one, on that day, which muſt ſo of neceſſity be on his *birth-day*: And ſo this way alſo one and the ſame day became ſacred among to the baptiſm and the birth. But all this, and what other miſtakings the *Greek* church

herein had, was imbraced by the moſt of them, but until they were better informed from the *weſtern* church; And the general of the *Armenians* ^c expreſly tells *Theophrastus* (who obſcures to him that ſermon of *St. Chryſoſtom* touching it) that they knew not yet, nor had not heard of any ſermon of *St. Chryſoſtom*'s to this purpoſe: So that want of inſtruction only continued this error among them, which hath been long ſince reformed in the *Syrian*, *Egyptian*, and *Ethiopian* churches, as well as in the *Greek*; as is before ſhewed in their agreement with us in the celebration of this birth. But for thoſe collections out of the name of the *epiphany*, and circumſtances of time of the baptiſm, it will ſoon appear that they juſtify nothing here againſt the received tradition. And firſt, for that of the name of *epiphania*, denoting the *apparition of a deity*, it is otherwiſe enough ſatisfied; and there was no need at all to have it reſtrained to the noting of the birth-day. For although the word *ἐπιφάνεια* be uſed in the holy ^d text, both for the firſt appearing of our Saviour, or his incarnation, as alſo for his coming at the ^e laſt day; yet in the firſt inſtitution of this feaſt of the *epiphany*, it was uſed (I ſuppoſe) for neither, but for that publick *apparition* or manifeſtation (by which the *Latin* fathers denote *epiphania*) of him to the world at his baptiſm, in regard whereof he was before but privately known. So expreſly *St. Chryſoſtom*, whoſe authority is here beyond exception; *Ἐπιφάνια ὅτι ἐπὶ τῇ αὐτοῦ παρουσίᾳ ἐγένετο καταλάλῃς, ἀλλ' ὅτι ἱερατικῶς, μὴ γὰρ πάντες ἤγνοῦτο τὸ ἡμέρας τῆς πολλοῦ. Why then is it called epiphania?* (in regard, as he before had ſaid, it is not the celebration of the birth-day, but of the day of the baptiſm;) *Because* (ſaith he) *when he was born, he was not then manifeſted to all men, but when he was baptized; for till then he was unknown to the multitude*: And to this purpoſe he brings alſo that of *St. John*, *I baptize with water; but there ſtandeth one among ye whom ye know not*, ſpeaking of our Saviour; And the ſame *evangelist* expreſly; *I knew him not, but in caſtrophῇ τῇ Ἰσραὴλ*, i. e. *that he might be manifeſted to Iſrael*; *therefore I came baptizing with water*. So *St. Jerom* tells ^f us what the name of *epiphany* denotes; *Significat* (ſaith he) *baptisma in quo aperti ſunt Chriſto celi, & epiphaniarum dies bucuſque venerabilis eſt, non ut quidam putant, natalis in carne, tunc enim abſconditus eſt, & non apparuit*. Others of the fathers have as much.

Hereto may be added the conſent of poſterity, after ſuch time as the true day of the birth was diſcovered to them in the *eaſtern* church. And in a poem (as they call it) uſed in the ſervice of the *epiphany* in the *Greek* church, made by ^g *Sophronius*, patriarch of *Jeruſalem*, an expreſs paſſage is fully to this purpoſe; *Δεξιζόμενοι τὸ ἀνάτορα ἐν μέσῃ, καὶ ἀμύτορα ἐν παρῳ, καὶ*

* Poſtellus de orbis concordia l. 7. c. 2.

^a Catholici Armen. in. legat. ad Armenios.

^b Videliſt Arm. Marcellin.

l. 1. in Conſtitutio & Juliano, & Orig. homil. diſverſis B.

^c Exercit. in Baron. 2. 5. 2.

^d In legatione ad

Armenios. ^e Epist. 10. ad Timoth. c. 1. comm. 10.

^f Ead. epist. c. 4. comm. 1.

^g Eusebii h. 7. 2.

^h In comment. ad Ezechiel. l. 1.

ⁱ Eusebiologium p. 93. b.

Of my Purpose and End in writing the History of T Y T H E S.

FOR my *purpose* and *end*, which I had in writing that book : In the brief opening of it here, I doubt not but to give such *satisfaction* to all good men, touching what is too frequently imputed to me, that they may hence know, how far it was from me to have a thought of writing any thing purposefully against any *right of tythes, or other maintenance of the clergy*, (as is supposed) to whom, in general, no man, I think, could ever in his heart give more *loving reverence*, than I have ever done, as the familiar witnesses of my manners can enough justify. Neither when I wrote it, was, or now is, the number of my friends without divers, and some of the choicest names, of that coar. Neither want I the *suffrages of many temperate judgments* among them, who, by knowing me well, know also, that I am so far from being in my thoughts adverse to their maintenance, that there lives not any, who indeed can wish, to the deserving part, more increase of it. And I did think, that none would have otherwise conceived of me, out of what I had written. But seeing some do, and that the book itself is by *publick authority suppressed*, and therefore not commonly seen; and being had also, is not enough known, without more time of *perusal*, than many are willing to bestow on it; and divers readers withal (and those especially which greedily turn it over, as in like cases, only because it is suppressed) are most *incompetent judges* of it : Therefore I shall here briefly design out first the *whole body* of it; and then also make such farther declaration of *my purpose in writing and publishing* it, that I may so both clear myself of such imputations, as I now suffer by it, and give also full *satisfaction* to all offence, which hath been herein taken against me.

§. I. The matter of the book, with the faith used in the relations of it.

The *whole body and matter* of it is convertible with the title, that is, *history only*, either of *laws made, or of opinions held touching tythes, or of practice* of payment of them. And as every such history should be framed according to *succession of time*, so is this. It begins with what express testimonies are in the *holy text*, in *fathers, or rabbins*, touching tythes before the *law*: then follows the *law and practice* of the *Jews under the law*, then of the *Gentiles*, and next of the *law, practice, and opinions* of all, or of the most of *christian churches from the primitive times to this day*, with a more parti-

cular declaration of *law and practice*, from ancient time to the present, used in the *church and state of England*: And very many laws made for tythes, and other records, touching them, which never saw light before, are published in it. This is the *sum of the contents of the whole book*, in which so much impartial care was every where used, that whatsoever could be found that gave any light, or further testimony to the historical part of this ecclesiastick revenue, was most faithfully inferred. And I call the Almighty to witness, that I neither purposefully omitted any thing, which might give light out of history, to the subject, nor did I, or do I yet, know of any passage there falsely quoted by me, or of any author's words in any kind falsified, although it be noted, and that in print, not only that I have falsified divers places of ancient authors, but also expressly in large terms, *that all my quotations in respect of tythes are false*. But I could never yet know, that any man could find so much as the least falshood in any of my quotations. And for those few that have been so noted to be false, I carefully searched them again, and found them all so exactly true, according as I had used them, that I willingly offer the loss of all my books (which is the truest *pledge* in such a case and, without a *pledge* offered, such a controversy, that may be perpetuated by iterations of affirmation and denial on both sides, cannot be so well determined) to him, whosoever he be, that can find, that I am not able, with my authors, fully to justify every one of them, as I have already protested in those papers, which were lately written and dispersed only to vindicate my faith from such *aspersions of falsification* as were laid on me. For although I have ever, and that naturally, avoided the beginning of *all personal opposition* in any matter of learning, yet being so publicly charged, and in print, with *falsifications*, whereof I knew myself most guilty, I had, as I conceived, just cause to clear myself of it, at least to my friends privately, by writing, although I had not *liberty to use the press* for it. Neither was I so forward to increase the quarrel in those papers, as to meddle with all *inferences and arguments* brought against my express testimonies of history. I was well contented, rather to allow him (that had so made himself my adversary) his own *logic and fancy of collection*, and so securely to trust his, and my readers judgments with it. And had I not been charged with *falsifying*, I had never more thought of, or in the least kind regarded any thing of the rest; that was so written

* Animadvers. on the history of tythes, p. 110.

against me. Nor could any thing there, but what so touched my *faith in relation*, have provoked my pen against any man; especially against him, who (for ought I know) may be as learned as he is reputed. But for matter of *falsification*, because some others also (as I have heard) pretend that I am guilty of it, (the truth whereof cannot be clearly discovered without comparing my *relations* with my *authorities*, which in very many particulars cannot be done without the use of many such books, as are not to be seen without my will, or the especial favour of some of my worthy friends) I here profess that, because I used in writing it, above one hundred several volumes, which were never publick, and divers other books, not commonly to be had; I am, and ever was since the publishing of it (and so I have still professed myself) most ready to communicate all the private manuscripts I have used (for, through the favour of some noble and worthy friends, I can promise so much) and to design out also the passages taken out of them, to any man that would take the pains to examine them; So clearly secure I am of my own good *faith* in the relations. But for matter of learning and inference, I willingly leave all that to greater judgments, and most willingly allow every man his own liberty of interpretation.

§. 2. *The cause that first moved me to write it, with the course kept in composing and publishing it; and my acknowledgment touching it being published.*

The matter or body of the work thus opened, with my own *faith* used in the *relations*; my *purpose* in it, shall fully, I trust, appear both in the *cause*, that first moved me to think of such a work, and in the *course* I kept, both in the *composing* and *publishing* it. The *cause* which first made me think of it, was, that I saw the bare *historical part* of learning, and of *human laws* made, touching *tythes*, and of the various *practice* of payment, both in this kingdom and in other states, lay wholly or too much neglected amongst them, who nevertheless having, as *divines* or *canonists*, written of *tythes*, would (as I conceived by their works) have made use of that *historical part*, if they had been furnished with it. The *practice* of the *Jews*, the various *interpretations* among the antients, of *tythes* given before the law; the *tythes* of the *Gentiles*, and the multitude of examples in the *practice* of payment and jurisdiction exercised, touching them, both in *foreign states* and at home, were such things, as I doubted not, but that even every ingenious christian would be glad to know, in this consideration of this ecclesiastick revenue. And I found also these, so much unknown to divers, with whom I had obvious discourse about the law and practice of *tything* in this kingdom, that what I affirmed out of such testimony, as had fallen under my observation in search of law and history, was denied me often, as if I had offered them my own fictions only. Hence took I the first

thoughts of writing it, and I doubted not at all, but that it would have been acceptable to the clergy, to whose *disputations* and *determinations* I resolved wholly to leave the point of *divine right of tythes*, and keep myself wholly to the *historical part*. And to this resolution I constantly restrained myself. In the *course* therefore of *composing* it, I took only by way of story, the various *opinions*, touching *tythes*, which either were for the *divine right*, or against it, the laws and the practice of payment of them; and this, as I found any thing that gave light in any of those three, in such testimonies of credit, with which my reading could furnish me. Neither omitted I any *opinion* or *passage*, that for ought I have yet learned, makes for *tythes* in the *primitive times*. I collected them in it in the very words of the fathers that afforded them. The *opinions* of the following ages, to this day, I faithfully related, as I found them, and divers also for the *divine right*, which were never before published, but have been since used, and cited only out of my collection for the justification of it. Neither is there any *passage* or *opinion* publick for the *divine right*, either of the antient or modern times, (that I could yet learn) which I have not either in particular inserted, (as in relating all those of the *primitive times*) or in general faithfully designed, as sometimes in the later ages. So did I relate the *practice*, so the *human laws*, touching *tythes*; in which, besides what I noted out of the *constitutions*, *decisions*, and *customs* of *foreign states*, I have one whole chapter, wherein, about forty several *acts* or *ordinances* are for *tythes* in this kingdom, very many of which were never before printed, but now first collected out of *manuscripts*, *histories*, *parliament rolls*, *synods*, and the like, and have been thence used also since for special testimony, by such as have written for the *divine right*. And in all these, I ever carefully abstained from letting fall a syllable of any determination, or argument of mine own, touching the point of *divine right of tythes*. No otherwise (for example) than *Plutarch* did in his books of the divers opinions of philosophers. He relates them, touching the most of particulars, that fall under the disquisition of nature, but yet censures not any, so that he delivers his own. Neither durst he, nor could he; for doubtless, he had not so studied them, as that he was enough able to confute or confirm them; but he sought and collected them as history only. So did I here the opinions of the rabbins, of fathers, of later divines, of canonists, and such more. And indeed, if I had done otherwise, I had run wholly from my title; for what had my opinion, touching *divine right* been to matter of history, which is only fact, and was all that my title directed me to? I never conceived that there was reason, why it should be exacted of him, who relates fact only, that he should conclude in a thing to which his premises have no reference; that is, in matter of right. Besides also, had there been proper place in it, for a determination, touching the *divine right* of

of them; yet I had purposely avoided it; and would have inferred my *just excuse* for doing so, and such a one, as even those, which have looked for in it, but found not any opinion of mine, touching the question of the *divine right*, will, I trust, allow for a just one; that is, that it could not be fit for me to meddle with that question, both in regard to my profession, which is restrained to *human laws* (to the search whereof history is incident) and in respect also of the *practised laws*, both of this kingdom, and of all other states in christendom. For my profession; it had been strange rashness in me, to have determined any thing in such a question, as not only touches not my *professed studies*, nor hath been made the object of them, but is also vexed on both sides frequently by *divines and canonists*; that is, by *them to whom it properly pertains*. It had been also injury in me, so to have meddled with other mens harvest. But for the *practice* both of this kingdom and other states, I saw that *human constitutions and customs* in every state, and so also in this kingdom, have, and that through many ages to this day, crossed the consequences, that follow upon the opinion, which concludes for the *divine right of the quota pars*, although divers have in the mean time written, and that in books by *publick authority* printed, for the maintenance of that opinion. Although therefore I should have so forgotten the limits of my profession, as to have studied the question to a determination in the composing this work; yet both for *providence* to mine own safety, and for *reverence as well to the state I live in, as to all christendom*, doubtless, I had purposely avoided the expression of so much. For had I upon such study of the question, determined on the one side the *quota pars*, ever due of all kind of increase by God's law, and withal shewed, (as I have done) both the practice of this kingdom, and of all christendom; I had therein, I suppose, determined, *that the practised laws, both of this kingdom and of all christendom, had been against God's law*, which I was never so much towards the sectary, as to dare to affirm. I so reverence the settled course of law and government, that out of my own brain I shall be never so bold as to tax it. But should I on the other side have concluded (if I had so studied the question) *against the opinions for the divine right published* by our divines, and that in print; I had herein also opposed my own single judgment, against what I saw *licensed by publick authority*. But I ever so revered also *publick authority*, that I would never be so insolent as to offer myself as a part against it. I had therefore reason, I think, (and I trust all men will conceive so) to abstain from either of these, although I had so studied the question to a determination; unless in the one, I should have *taxed what the publick authority* of censuring of books here so allows of. But for the determina-

tion of that question, I both then did, and now do leave it wholly (as a thing also not vexed in my studies) to divines, to whose faculty it is only proper. Having at length (with this advice to myself, as is hitherto opened) composed it, I committed it to the *censure* of one that had the power of *licensing it for the press*. I left it with him, and to his own time, and without so much as any further request from me to him. He sent it to me *licensed*, with *its est*, and *subscription of his name*. Then was it printed, and until it was wholly printed, I never had the least expression of any dislike to it from any man that had any *authority or power of command*, either in the *state*, or in the *church*. Had I received from either any command signified for the suppression of it, I had soon obeyed it, and as easily and as willingly even forgotten to think of printing it; so far was I from being ambitious of the publishing it. But as soon as it was printed and publick, divers were ready, and that in much shorter time than they could possibly have read it, after the impression of it to publish, and that also frequently in sermons; that it was written to *prove that tythes were not due jure divino*. Many lay-hearers believed them, and were ready to believe, or at least suspect that some such thing was proved there, because they that reported it, seemed both judicious, and to be so much offended with it, that they would not have it seen^b at all, least it should prejudice that *divine right*. Some also (as I can testify myself) upon the various report of it, believed confidently, that it was written to prove, nay, that it had proved, that *no tythes at all were due*: others, that I had concluded, that questionless lay-men might, with good conscience, *detain impropriated churches*; others, that it was expressly *against the tythes* of London. Whereas indeed for that first of the duty of tythes (although purposely I abstained from touching the determination of divine right, by way of disputation, as is before shewed) I doubt not, under the favour of those who are more knowing, but that I may boldly affirm, that there is, by many degrees, much more *historical testimony* out of old *authors and councils*, and other *human laws*, for the duty of them, collected in it, than ever was at all before published: And for *impropriated churches*, I have not a syllable that denotes any such conclusion. The same reasons that kept me from the question of the divine right, taught me also to abstain from the point of laymen's detaining things *once consecrated*. And for the *tythes* in London, I use not a word of them otherwise, than historically; and the question of them (however they are called *tythes*) is depending only (for ought I know) upon an ordinance or act of parliament, and that act I have faithfully related too. And in sum, whatsoever I have there, from the beginning to the end, is but a collection into one volume of such things of fact, as lay before dispersed in many fathers,

councils,

^b While yet in every parish church, books are by publick authority kept, wherein whole sermons and arguments against the divine right are commended and vulgarly read, as is seen in that of Fox's acts and monuments, p. 435. 446. 494. & 602. Edit. Lond. 1610.

councils, stories, and other records, to be seen at any time, by them that desire them.

But when these various reports of it were published, and too forwardly believed; and that also by *misinterpretation*, and *untimely application* of many particulars in it, arguments were by some soon drawn out of it, to oppose the churches maintenance; it so fell out, that what in itself was written only *for history*, became thus reputed the *original* and *cause* of such opposition. This made me much grieved, both in that I had been so unfortunate as to *publish* that, which (being clear truth of history in itself, and as I had written it) was notwithstanding so abused to far other ends than what my purpose was, or what an impartial judgment should have extracted out of it; as also in that I had, by reason of it, incurred his majesty's displeasure. Hereupon, by special command of his majesty, (whose most tender care of the church is most eminent among those admirable parts of his great wisdom and goodness) I was convened before my most honoured lords, the lords of his majesty's most honourable privy council, where I most willingly acknowledged (as I do still from my heart, and did ever since I first saw that any argument was taken out of it in prejudice of any rights of the church) that I was most sorry for *this error in writing and publishing* that work; and for that I had, by any manner of passage in it whatsoever, offered any occasion of argument against the right ei-

ther of *tytbes*, or of any other maintenance of the church whatsoever. Thus much also, in the same syllables, I as willingly acknowledged before some lords high commissioners. Thus much I still do to the world, which acknowledgement also hath been by some as much misinterpreted as the book itself, while they collect out of it, as if I acknowledged my *historical relations and quotations to be false or full of error*; they are every one (for ought I could ever yet learn) true, as I have expressed them for story. But I am most sorry (and so should have been, though I had never been questioned) that any occasion is taken out of them in any kind of prejudice to the clergy. The *whole body* of it therefore, with the cause of writing it, and the *course* I took in composing it, together with the *circumstances of publishing it*, thus briefly hitherto opened, sufficiently (as I trust) shew, that my *end* and *purpose* in it, was so far from calling in question the *divine right*, or any other right of *tytbes*, that it was on the contrary side, wholly to leave that question of *divine right to divines*, to whom it properly pertains, and to collect here all such testimony of *secular laws and history* (which have been the objects of my studies) as might at *one face* discover, what hath been from *antientest time, till this day, practised, held, or ordained, touching tytbes*; which whosoever examines it, will find, that I have, although unfortunately, yet most faithfully done.



Of the JEWS sometimes living in ENGLAND.

OF the *Jews* first coming to this land, is uncertain. It seems that some little notice was taken of them before the conquest; after which we have divers testimonies, and besides others, the statute *de Judaismo*. Both before and after, their state and condition was very servile, as appeareth in *legib. Confess. cap. 29. Judaei & omnia sua regis sunt, &c.* The *Jews* and all they had, was the king's. What they suffered in succeeding ages, our common stories discover. There was one amongst them which had the office of *presbyteratus omnium Judaeorum totius Angliae* (which I take to be their chief priesthood, in their synagogues; for if it had signified a meer lay-eldership, I guess I should have met with it in the pleas of their exchequer) and this lay in the king's grant, as by king *John's* charter of it may be seen. *In rot. chart. 1. Johan. reg. ch. 171. memb. 28. Omnibus fidelibus suis, & omnibus & Judaeis & Anglis salutem. Scitis nos concessisse, & praesenti charta nostra confirmasse Jacobo Judaeo de Londoniis presbytero Judaeorum, presbyteratum omnium Judaeorum totius Angliae habendam & tenendam quamdiu vixerit, libere & honorifice, & quiete & integre, ita quod nemo ei super hoc molestiam aliquam aut gravamen inferre praesumat. Quare, &c. apud Rotbomagum 31. die Julii anno regni nostri primo.* Therein is also mention of a former charter granted by *Rich. 1.* Certain justices were appointed *ad custodiam Judaeorum*, before whom pleas betwixt them, and others and them, were held, and matters adjudged, *secundum legem & consuetudinem Judaismi*, as the entry often is. In most towns of note, were two christians, and two *Jews*, or one of both sides, appointed as public notaries for all their deeds of contract; and those notaries had one chest, and several keys, for the safe keeping of such deeds, and they were called *cyrographarii Christiani & Judaei arcae cyrographicae Oxoniae*, or other such town. And hence must you interpret *les bouches cyrographes*, in *statuto de Judaismo*. And by these notaries or cyrographers, the deeds of the *Jews* were tried. These deeds and such like, they called usually *farra*, of their Hebrew word *shetar*, that is, a deed or contract; as *Salomon de Stanford* *agnovit per farra suum*, and the like. And however land was not subject to execution for debt, till 13 *Ed. 1.* yet it seems by 52 *Henry III.* that for debts of the *Jews*, land was seized by writ for the debtor; *Constat justitiariis & per inspectionem rotulorum de scaccario nostro Judaeorum, quod Aaron, &c.* When any man

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had dealt much with them, and after all discharges doubted further ill measure by any such *farra* or deeds lying hid, the course was to send out a process to the sheriff of the county, or constables of the castles of great towns, to make proclamation on their sabbaths, summoning all *Jews* of this or that synagogue to be at their exchequer, to account with such as doubted in that kind. Thus 52 *Hen. III. praeceptum est vice-comiti Essex quod clamari saceret per scholas Judaeorum Colcestriae per duo vel tria sabbata, si aliquis Judaeus vel Judaea aliquod debitum exigere poterit de Rogero filio Petri, &c.* that then he or she should come *ad computandum*. *Et vicecomes mandavit tam litera Latina quam Ebraica, quod nullus Judaeus nec Judaea aliquod debitum exigit de praedicto Rogero.* So do all other sheriffs and constables return in *Hebrew* and *Latin*. For in those times, both languages were used, not only in deeds of the *Jews*, which I have often seen with the *Hebrew* on the one side, and the same in the *Latin* on the other, but also in records of law, as in 43 *Hen. III. in regiff. monasterii de Boxgrave in Suffex, &c.* And as both tongues were used, so in trials betwixt christians and them, the *venire facias* was *sex probos & legales homines, & sex legales Judaeos*, as often appears. What oath was given them, I find not, but *R. Moser Mitkotszi*, that lived in the time of *Hen. III.* writes in *prae. affirmat. 123.* that holding the book of the pentateuch between their arms, they called to witness the God of *Israël, which is merciful, &c.*

Upon their conversion, their goods were confiscate, which was (it seems) after such time as the *domus converforum* (that which is now the rolls) was in 17 *Hen. III.* built for them, where they might live *sub quadam honesta vivendi regula, & certum haberent in tota vita sua domicilium, tutum refugium & sufficiens vitae sustentamentum, sine servili labore & foenoris emolumento*, as the words of *Mat. Paris* are. In 52 *Hen. III. Josfin Ben Salomon*, a *Jew* of *Marlborough*, shews to the court of the justices of the *Jews*, that one *Jocietz* his sister, was married to one *Salon* the son of *Lombard of Kirkklade, & quod ipsa habuit in arca cyrograph. Merlebrigie annum cyrograph. xxxii. marcarum*, which upon her conversion, became the king's, as the roll saith, and *quod hoc totum sit verum, obligat omnia bona sua, &c.* which all were confiscate for not prosecuting the suit. But in the time of *Edw. 1.* it was granted, that the house should have one half of the goods of the convert, and that he himself should have the other half. So *placit. 9 Ed. 1. Jo. de sancto*

9 C

sancto Dionys. custos domus converſorum hath a writ for the moiety of the goods of *Beleager* and *Hucoth*, *Jewesses of Oxford*, late converts, &c. the other half allowed to them.

One cruel and (to speak the properest phrase) *Jewish* crime was usual amongst them, every year towards *Easter*, though it were not always known (see *Matt. Paris* in 39 *Hen. III.*) to steal a young boy, circumcise him, and after a solemn judgment, making one of their own nation a *Pilate*, to crucify him out of their devilish malice to *Christ* and christians. For their circumcising alone, take this record, *inter placita 18 Hen. III. rot. 21. Norff. Benedictus phisicus appellat Jacobum de Norwico Judacum, quod cum Odoardus filius suus puer ætatis 5. annorum ivit ludendo, &c.* that four years before that, *James* the Jew, had taken his son *Edward* as he was playing in the street, and carrying him to his house, circumcised him, and there detained him one day and night, till by force of christians he recovered him, having his circumcised member then swollen, &c. The child being examined, confessed that they took and carried him to the house of *James* aforesaid, where, while one held him, and covered his eyes, another circumcised him with a knife. The piece cut off, they put in a basin of sand, (*in quodam vacino cum ſabelone, & quæſerunt peciam illam cum parvis ſuffletis.*) and there they with small puffs of wind out of their mouths, sought it; and the Jew which first found it, was called *Jurnepin*, and therefore they gave the same name to the child, calling him *Jurnepin*. The archdeacon's official came to testify this with a great company of priests, all in the word of God saying as aforesaid, that they saw his member swollen; and the coroners of *Norwich*, with thirty six of the citizens, testified as much. Hecuppon the Jews were all put in prison, and found accessories, except *Masse* the son of *Salomon*. Order was taken, because the case was strange, and they had no precedent of the like, it should first be inquired of by the ecclesiastical

ordinary, and that he should certify to the king. The Jews after procured the boy to be seen, and his member was found covered. But this is not repugnant to the former testimony, seeing by surgery,* the skin may be drawn forth to an uncircumcision. In the year following of *Hen. III. Mat. Paris* reports such a deed of the Jews of *Norwich*, and in 24 *Hen. III.* that they circumcised a christian child, and called him, *Jurnin*, and meant to have crucified him. All the Jews of the city were questioned about it; and when they would have referred themselves to lay authority, *William de Ralegh*, the bishop, says, *haec ad ecclesiam spectant, non ad regalem curiam, cum de circumcissione & de fidei læſione quaestio ventilatur.* Four Jews convicted hereof were drawn at horses tails, and hanged on the gibbet. In 39 *Hen. III.* the case of *Hugh* of *Lincoln* crucified is in the same author, and for it eighteen Jews were at once drawn hanged. This *Hugh* is reckoned as a saint in *Chancer's* prioresses tale. By reason of their exactions and usuries, they were all banished (their moveables allowed them, but *Walsingham* says, only their expences for passage) in 18 *Ed. I. Mat. Westmin.* numbers them 160511. The house of converts in *pat. 51. Ed. III. memb. 20.* is given to the master of the rolls.

By the statute of *Judaism*, they were to wear (every one being past seven years old) a cognifance of yellow upon their upper garment, thereby to be known, some such distinction had been generally enjoined in the council of *Lateran*. See the *statut. & cap. de Jud. 6 R. I. Roger. de Hoveden, fol. 424.* They were forbidden to build new synagogues, made subject to the payment of tythes, and were to wear on their upper garment, on the breast, two pieces of woollen cloth of another colour, plainly to be discerned, each of them two fingers broad, and four in length, by the provincial council of *Oxford*, under *Stephen* archbishop of *Canterbury* in 8 *Hen. III.*

* Cels. de remed. l. 7. c. 25. Epiphani. de pond. i. Cor. vii. 18.



A BRIEF
DISCOURSE
Touching the
OFFICE
OF
LORD CHANCELLOR of *ENGLAND*.

A BRIEF

DISCOURSE

Touching the OFFICE of

Lord Chancellor of *ENGLAND*, &c.

I. The name and office of lord chancellor of England under the Saxons.

THE eldest mention, in good authority, of the name of chancellor of this kingdom, is in *Edward* the elder's time, ^a about the year *DCCECXX*. He made *Turketill*, abbot of *Croyland*, his chancellor. *Cancellarium suum eum constituit, ut quaecunque negotia temporalia vel spiritualia, regis iudicium expectabant, illius consilio & decreto (nam tantae fidei & tam profundi ingenii tenebatur) omnia tractarentur, & tractata irrefragabilem sententiam fortirentur.* This abbot held the office under *Abelslan*, *Edmund*, and *Edred*, succeeding kings.

King *Ethelred* afterwards divided the chancellorship ^b between the abbots of *Ely*, and *St. Augustine* in *Canterbury*, and of *Glastenbury*, who were to exercise it by turn. The words of an old monk of *Ely* are; *Statuit atque concessit, quatenus ecclesia de Ely extunc & semper in regis curia cancellarii ageret dignitatem, quod & aliis, sancti viz. Augustini & Glasconiac ecclesiis constituit, ut abbates istorum coenobiorum vicissim assignatis succedendo temporibus annum trisarie dividerint, cum sanctuarii & caeteris ornatibus altaris ministrando:* So as the abbot of *Ely*, or some monk by him appointed, exercised the office from *Candlemas* four months yearly, and the other two, of *Glastenbury*, and *St. Augustine's* made up the twelve.

But there occurs not any subscription in charters by that name, till the *Confessor*, in his patent to the church of *Westminster*; after the king, bishops, abbots, and others, comes, *ego Rembaldus cancellarius subscripsi.*

Yet in the antientest monument of a grant by any king extant here, I doubt not but the chancellor subscribed, though under another name.

^c The first christian king of the Saxons founded and endowed *Canterbury* church, and in his

charter amongst the earls, occurs, *Ego Augmandus referendarius subscripsi*; where *referendarius* may well stand for *cancellarius*, the office of both (as the words applied to the court are used in the code, novels, and story of the declining empire) signifying an officer, that received petitions and supplications to the king, and made out his writs and mandates, as a *custor legis*: And though there were divers *referendarii*, as fourteen, then eight, then more again, and so divers chancellors in the empire; yet one especially here, exercising an office of the nature of these many, might well be stiled by either of the names. These are testimonies of that time without exception; though *Polydore* begin the name and office at the *Norman* conquest.

II. Whether the keeping of a seal were in the chancellorship under the Saxons.

FOR that principal part of the office, or that other office joined with the chancellorship, the keeping of the seal; If the common opinion were clear, that under the *Saxon* state, no seals were here used, then were it vain to think of it, as of that time. But there is yet remaining an old *Saxon* charter of king *Edgar*, beginning, *A orthodoxorum vigoris ecclesiastici monitu creberrime instrumur, &c.* to the abbey of *Perfore*, wherein divers lands are given, and there remain in the parchment, plain signs of three labels by the places cut for their being hanged on; and of the self same character a testimony also as antient, that the seals were, one of king *Edgar*, the second of *St. Dunstan*, and the third of *Alfred ducis Merciorum*. That testimony is in a letter from *Godfrey*, arch-deacon of *Worcester* to pope *Alexander III.* writing of that charter, and the authority of it. *Noverit, fidei he, sanctitas vestra, verum esse,*

^a Temp. Edm. fecit & sequentium regum Ingulphus.^b Temp. Ethelred.^c Temp. Ethelred.

quod conscripti hujus scriptum originale invirtute sanctæ Trinitatis sigilla tria trium personarum autenticarum, ad veritatem, triplici confirmatione commendat; est autem sigillum primum illustris regis Edgari; secundum Sancti Dunstani Cantuariensis archiepiscopi; tertium Alferi ducis Merciorum; sicut ex diligentibus literarum impressarum inspectione evidenter accepi. And it is reported by those which have searched the records of St. Deny's church in France, there remain two charters, the one of *Offa*, the other of one *Edgar*, with seals annexed; the one of which I have seen cast off in lead, and is about the breadth of a shilling thick, and having a face on the one side. Likewise amongst the *chartæ antiquæ*, (divers being reckoned *cum sigillo*, others *sine sigillo*) one is *cum sigillo* of king *Canute*. Neither is there any colour of doubt but that the *Confessor* had his seal, for the print yet remains in part to be seen. But notwithstanding these singular examples of kings sealing in the *Saxons* times, it is most certain, it was not a thing common then; neither could any in the chancellorship be denominated from keeping the seal, nor in any other office. Curiosity in some particular occasion swayed more in it, than any custom; although we admit those before-mentioned for true, which may well be doubted, in regard of the frequent fraud and ignorance in committing it, which in the elder times possessed the churchmen. But for the *Confessor's* seal, that was without scruple certain, and thence may we confidently derive the great seal of *England*.

III. Testimonies of the chancellorship and keepership joined, in times near after the Norman invasion.

AS in the monuments of the *Confessor*, *Rembald* is named chancellor; so under the first *William*, *Maurice* bishop of *London*, and in the succeeding times others. Old stories of the monks sufficiently mention them. But little appears of the office till the time of *Henry II.* under whom, one writing the life of *Thomas Becket*, that was lord chancellor, hath this most antient testimony of it, and of keeping the seal also; *Cancellarii dignitas est, ut secundus a rege in regno habeatur; ut altera parte sigilli regii, quod & ad ejus pertinet custodiam, propria signet mandata, ut capella regia in illius sit dispositione & cura, ut vacantes archiepiscopatus, episcopatus, abbatis, & baronias, cadentes in manum regis ipse suscipiat & conservet; ut omnibus regis assistentibus, etiam non vocatus, accedat; ut omnia sigilliferi clerici regii sua manu signentur. Item ut suffragantibus, ex Dei gra-*

tia vite meritis, non moriatur, nisi archiepiscopus vel episcopus se voluerit. Inde est quod cancellaria non emenda est. And another of the same time; *Cancellarius sicut in curia, sic & ad seccarium magnus est; adeo ut sine ipsius consensu vel consilio nihil magnum fiat vel fieri debeat: verum hoc habet officium dum residet ad seccarium. Ad ipsum pertinet custodia sigilli regii, quod est in thesauro; sed inde non recedit, nisi cum precepto justiciarii, (that is, chief justice of England, that was a viceroy) ab inferiore ad superius seccarium, a thesaurario vel camerario deferatur ad explenda solum negotia seccarii; quibus peractis in locum mittitur, & locus a cancellario consignatur, & sic thesaurario traditur custodiendus. Item cum necesse fuerit signatus, sub omnium oculis cancellario offertur, nunquam ab ipso vel ab alio alias offerendus. Item ad ipsum pertinet rotuli, qui est de cancellaria, custodia per suppositam personam. Another about the time of *Edward I.* *Officium cancellariæ viro provido & discreto, ut episcopo vel clerico magnæ dignitatis, debet committi, simul cum cura majoris sigilli regni, cujus substituti sunt cancellarii omnes in Anglia, Hibernia, Wallia, & Scotia. Omnesque sigilli regii custodes præter custodem sigilli privati.**

IV. Of the division and conjunction of lord chancellor and lord keeper, till an act made that they should be one.

BUT, for that of *cancellaria emenda non est*,^a an example not long after was, not only in truth to the contrary, but entered also in publick records. For *Walter de Gray*, of the family of the *Grays* of *Rotherfield*, in *Oxfordshire*, in the seventh of King *John*, dat domino regi quinque millia marcarum pro habenda cancellaria domini regis tota vite sua; & pro habenda inde charta domini regis. So are the words of the roll, and the days of payment are set down also; and in the rolls of the same year occurs, *Hic recepit W. Gray cancellaria*. Yet had he not always the custody of the seal, for in the charter roll of that year, after the taking his chancellorship, there is but one patent or charter dated by him, as the fashion then was, with dat. per manum *W. de G. cancellarii nostri*, or the like.

Those that both follow and precede, are dat. per manum *Hugonis de Welles archidiaconi Willelmi*,^b who, it seems, kept the seal; and therefore he is expressly called the king's chancellor in some monks that writ of that time, as others are for the same cause. Neither was it ever heard of them to have the chancellorship granted, yet

^a In the register of *Croyland* it appears, that the Normans brought in the use of seals to charters.

^b *Gray* cancellar. & alii missi ad Ottonem imp. nepotem regis Johannis.

^c Carta regis *W.* de Carrio de domo sua de Carrio, &c. teste *W.* de Heiwer. apud Westm. 21. Maii. Carta regis *Joh.* 12da. Manicio de Gant de manerio de Barewe, teste vel. dat. per manum *Radulphi de Nevill* apud Buttevil 28 Julii an. 16. pat. p. 2. m. 8. Et ibid. m. 4. Ric. de Maricis cancellarius.

^d Pat. 17. Joh. m. 2. Ric. de Maricis cancellar. 28 Apr. Et ib. in dori. idem cancellarius missus Romam. Cart. 18. Joh. rex dedit *Baldwino* de Guine manerium de Benefeld, &c. dat. per manum magistri *Ric.* de Maricis cancellarii nostri apud Nares 10 Maii Pat. 15. Joh. p. 1. m. 8. Et fin. m. 5. Wali. de *Gray* cancellar. ib. m. 5. idem factus fuit episcopus.

^e Willelm. Pat. 18. Joh. m. 4. Ric. de Maricis cancellar. 14 Julii. Cart. 17. Joh. m. 3. Ric. de Maricis cancellarius.

^a Cart. 14. Joh. dorso *Wale*.

^b Pat. 14. Joh. m.

^c Pat. 14. Joh. m.

^d Pat. 14. Joh. m.

^e Pat. 14. Joh. m.

^f Pat. 14. Joh. m.

^g Pat. 14. Joh. m.

^h Pat. 14. Joh. m.

ⁱ Pat. 14. Joh. m.

^j Pat. 14. Joh. m.

^k Pat. 14. Joh. m.

^l Pat. 14. Joh. m.

^m Pat. 14. Joh. m.

ⁿ Pat. 14. Joh. m.

^o Pat. 14. Joh. m.

^p Pat. 14. Joh. m.

^q Pat. 14. Joh. m.

the seal still to remain in another hand. For also while this *W. de Gray* was chancellor, *Richard de Marisco*, whom *Matthew Paris* calls chancellor too, and others miscekon him for one who had the keeping of the seal, the roll is, *nono die Octobris anno regni domini regis 15. liberavit magister Richardus de Marisco archidiaconus Richmond. & Northumbr. domino regi sigillum apud Ospring*; and then on the twenty second of December following, *apud Windlesores liberatum fuit sigillum domino R. de Nevill, deferendum sub domino P. Wintoniensis episcopo*, that was *Peter de Roches*, or *de Rupibus*, chief justice of England. But this here, out of the infallible testimony of records, touching *W. de Gray*, differs not a little in time from the relation of the monk, notwithstanding the seal thus committed to *Ralph de Nevill*, who had it also under *Henry III.* in the beginning of his reign, *totius regni ordinante consensu & consilio*; yet the patent and other charters and close letters of the time, are for the most part, *per rectorem regni*; or *teste P. Wintoniensis episcopo*; or *T. H. de Burgo*, chief justice of England under *Henry III.* *per eundem*; or *per P. Wintoniensem episcopum*, or the like.

And yet also in rolls of that time, where *Nevill* never at all makes the *teste*, or hath his name added, mention is of him for other uses as belonging to the office of chancellorship, as the delivery of the counter-briefs to him and *finis, &c. mittend' in scaccarium*, according to the use of that age. But although both records and story thus make *R. de Nevill*, lord keeper from king *John* unto *Henry III.* yet had not he any patent of either¹ chancellorship or keepership till eleventh of *Henry III.* where both a patent of the keeping of the seal for life, either by himself or deputy, and another of the chancellorship of England, *toto tempore vitae suae*, were made to him, both bearing the same date.

Yet after this² also, through divers oppositions in state against the goodness and noble carriage of this *Ralph de Nevill*, the seal was after unjustly taken from him, and restored again, as his former right. And in twentieth of *Henry II.*

the king would have had it from him, *sed idem cancellarius* (saith the monk) *hoc facere renuit, videns impetum regis modestiae fines excedentem; dixitque se nulla ratione hoc facere posse, cum illud communi consilio regni suscepisset. Quapropter nec illud similiter sine communi assensu regni alicui resignaret.* Yet in twenty second of *Henry III.* the king violently took it from him, and committed it to one *Godfrey*, a templer, and *John of Lexington*; emolumentis tamen (so says the story) *ad cancellarium spectantibus, episcopo quasi cancellario, redditus & assignatis.* Afterward one *Simon Norman*, a lawyer, had it; and from him it was taken, and committed to *Richard* abbot of *Evelham*; who kept it three years, and then resigned it in the twenty sixth of *Henry III.* The chancellor and keeper (of right) *Nevill*, was afterward reconciled to the king, and died in the twenty eighth of *Henry III.*

In the acts of parliament of which year, one is, that the keeper of the seal should be always the chancellor, and that all things sealed otherwise should be void. The words are, *si aliqua interveniente occasione dominus rex abstulerit sigillum suum a cancellario, quicquid fuerit interim sigillatum, irritum habeatur & inane, deinde cancellario fiat restitutio.* And it appears otherwise, that they always took it unjustly done, if the chancellorship and keepership were not in one; by reason whereof, before that, in a charter of king *John's*, yet extant in some hands, of the moderation of the fees of the seal, no person is spoken of but the chancellor and his under officers; as if it could not have been but that whoever had the seal, the same should only be chancellor.

According to that, the chancellorship and keepership were joined in all the chancellors under *Henry III.* and *Edward I.* most of which being made bishops, resigned their seal and office, although, afterward under the succeeding kings, sometimes the seal was committed to other hands upon some requiring occasions; and some lord keepers were created in later times before Sir *Nicholas Bacon*, in whose time that statute of *5 Eliz.* was made.

¹ Cart. 17 H. III. p. 2. m. 23.

² An. 13 H. III. The king granted to *Ralph bishop of Chichester* the chancellorship for life, 16 Nov. And likewise to the same *Ralph*, the same office, An. 16 Hen. III. 14 Julii. And by another charter of the same date, the custody of the seal for life also, is exercised that keepership in person, or by an officer. Vide etiam cart. 17 H. III. pro eodem episcopo de eisdem officiis pro terminis vitae suae.



THE
PRIVILEGES
OF THE
BARONAGE of *ENGLAND*.

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9 E

THE

THE P R I V I L E G E S OF THE BARONAGE of ENGLAND.

AND FIRST,

Of those special rights which concern them, as they are
one estate, in the upper house of parliament.

C H A P. I.

Of the proxies of the lords of parliament.

UPON the summons of the parliament, licence of absence being obtained, and in the same licence (as usually) it being provided that a *proxy* be made, the *baron* so licensed may appear only by that *proxy* to whom his voice is so committed, although his writ be, *quod personaliter interfuit*. And so also without licence, upon sickness, or such inevitable cause of absence.

The first mention of *proxies* that occurs in the memories of our parliaments, is of *Carlisle*, under *Edward I.* where the words are, *Quia omnes praelati, milites, & alii de communitate regni, tunc plenarie non venerunt, receptis quibusdam procuracionibus praelatorum, qui venire non poterant, adornantur omnes qui summoniti sunt ad parlamentum, usque ad diem Mercurii proximum sequentem ad horam primam.* And in a parliament held at *Westminster* under *Edward II.* the bishops of *Durham* and *Carlisle*, remaining upon the defence of the marches of *Scotland*, are severally commanded to stay there; and in the writ this clause was ordered to both of them; *Sed procuratorem vestrum sufficienter instructum ad dictos diem & locum mittatis, ad consentiendum quod tunc ibidem per dictos praelatos & proceres contigerit ordinari.* And the like testimonies are afterwards under the same king for allowance, and making of *proxies*, by the name of *procuratores sufficientes*. And in succeeding times the testimonies of them down to this day are most frequent.

But two things are most especially observable touching them.

1. That although general *proxies* are admitted, yet sometimes when the nature of the parliamentary business required more speedy and full advice, a clause was inserted into the summons to premonish the *baron* summoned, that his *proxy* should not be admitted, unless he were compelled to absent himself by most inevitable necessity. So was it in the writs of summons under *Edward III.* to the parliament, held for advice touching the voyage with the king of *France*, into the holy land, every *baron* having these words in his writ; *Scientes pro certo quod nisi evidens, & manifesta necessitas id expostulat, non intendimus procuratores seu excusatores pro vobis admittere, ea vice, propter arduitatem negotiorum praedictorum.* And likewise under *Richard II.* the summons to the archbishop of *Canterbury*, and the rest had these words in it; *Et hoc nullatenus omitatis, ne quid absit per vestram absentiam quam necessitate infirmitate tunc detenti fueritis quod aequaliter illuc laborare non poteritis nullo modo excusati. habere volumus ista vice expeditio ne potior nostrorum praedictorum retardetur seu aequaliter deferatur.* And divers other examples are for personal appearance, and excluding *proxies*.

2. That the course of the elder times was not, that *barons* only were made *proxies* in the upper house, as at this day; but other men also of lower condition. And this is very frequently in the case of bishops, and parliamentary *abbots* and *priors*, who gave their letters usually to parsons, prebendaries, canonists, or
such

such like. In that parliament of *Carlisle* under *Edward I.* the bishop of *Exeter* sends to the parliament, *Henry de Pinckny*, parson of *Houghton*, as his proxy; the bishop of *Bath* and *Wells* sends *William* of *Carleton*, a canon of his church; and in like sort other of the spiritual lords of that time.

In the beginning of the seventeenth year of *Richard II.* the bishop of *Norwich* makes *Richard Corgeaux*, being then dean of the arches, *Thomas Hederfett*, arch-deacon of *Sudbury*, and *John Thorpe*, parson of *Erpingham*, his proxies, by the name of *procuratores sue nuntii*. And in the same year the bishop of *Durham's* proxies are *John* of *Burton*, canon of *Bewdley*, and master of the rolls, and *John* of *Wendlingborough*, canon of *London*; and other like are of the same time. By which also that of the preamble of the statute of *præmunire* is understood; where it is said, That the advice of the lords spiritual being present, and of the procurators of them that were absent, was demanded. The like under *Henry IV.* and *Henry V.* are found in the rolls. And under *Henry V.* the archbishop of *Tork* gives the proxy to the bishop of *Durham*, and two other clerks of his province. And it is observable, that in the making of proxies by the whole number of bishops in case of attainders upon appeal, their course was sometimes to make a gentleman, beneath the degree of a baron, their proxy; as under *Richard II.* first they made their proxy for assenting in the parliament, but afterwards the earl of *Wiltshire* had that place in the same parliament. But this (of making others than barons of parliament, proxies) is rarely found in the cases of the lords temporal.

One special case of it is under *Henry V.* in that of *Thomas de la Ware*, who being a clergyman, had his barony descended unto him, and is stiled in the summons always *magister Thomas de la Ware*, and not *dominus*; he gave his letters to *John Franke*, and *Richard Hulme*, clerks. But the proxy rolls for the temporal lords are for the most part all lost. The following times, especially ever since the first memory extant of the journals of the upper house, which began the first of *Henry VIII.* have kept a constant course of making parliamentary barons only proxies. And it appeareth in those journals that one, two, or three are joined in the letters, *conjunctim & divisim*. And most commonly temporal lords give their proxies to temporal, and spiritual to spiritual men; Yet not without examples of a temporal lord's giving his letters of proxy to a spiritual and temporal lord together; as under queen *Mary*, *Francis* earl of *Shrewsbury* made *Anthony* viscount *Mountague*, and *Thomas* bishop of *Ely*, his proxies; And in the beginning of queen *Mary*, *Stephen Gardiner*, bishop of *Winchester* is joined in letters of proxy, sometimes with a temporal lord.

C H A P. II.

Privileges in suits, as well for their followers as for themselves, during the parliament.

IN a bill exhibited under *Henry IV.* is shewed, that the lords, knights, &c. *Et leur homes & servants*, &c. should not be arrested, or otherwise imprisoned by the custom of the realm; and it is prayed that if any be, the parties offending may make fine and ransom, and give damages, &c. Hereunto the answer is, *Ad sufficient remedi en la cas*. In the beginning of queen *Elizabeth*, *John Broxham* being plaintiff, in an assize in the county of *Lincoln* against the lord *Willoughby*, it was ordained, that an injunction should go out of the chancery, *subpaena 500l.* that the plaintiff should not proceed to trial.

To this head may be referred that case of the lord *Cromwell*, cited in the title of *process* against them in *English* courts. And in the journals of queen *Elizabeth*, king *James*, and our present sovereign, the testimonies of these privileges for the servants of every baron of parliament are most frequent.

Hereunto may be added that of the citation out of an ecclesiastical court against the earl of *Cornwall*, which was served upon him in *Westminster-hall*, as he was going to the parliament, at the suit of *Bogo de Clare*, and the prior of *St. Trinity* in *London*, for the earl sued them for the contempt, and recovered a thousand marks damages. And in the same parliament, the master of the *Temple* petitioneth, that he might distrain for rent in a house in *London*, which it seems the bishop of *St. Davids* held of him; *In qua non potest distringere in tempore parliamenti*. But the answer is, *non videtur honestum quod rex concedat, quod ille de consilio suo distringatur tempore parliamenti, sed alio tempore distringat per ostia & fenestras, prout moris est*.

C H A P. III.

No peer of the upper house to be called to answer in the lower house only.

Thomas Philips complained of the bishop of *London* upon divers articles in the lower house, and this at first by order of the house, whence it was referred by reason of the slight nature of the offence, &c. whereupon the bishop remembering the upper house of their privileges, *ejus verbis auditis, proceres omnes tam spirituales quam temporales una voce dicebant, quod non consentaneum fuit aliquem procerum prædictorum alicui in eo loco responsurum*. So where the bishop of *Bristol*

* *Diana*, parl. 59 & 41 *Elizabeth* & 1 *Jac.* &c.
Hen. VIII.

• Rot. parl. 18 *E. I.* rot. 2. dorso.

• Rot. Martii in dur. parl. 14

had

had written the book of *Union*, which was conceived to be derogatory to the honour of both houses, yet he was complained of only in the upper house. And that so he ought to be, and not before the lower house alone, it was acknowledged in the message delivered from the lower house touching him.

CHAP. IV.

Their jurisdiction } Offences as well capital
in matters of } as not capital.
Errors out of the king's bench.

THE power of judicature belonging to the lords of parliament, is chiefly seen in their jurisdiction upon writs of error, and their judgments of offences, as well capital as not capital, which they give to any publick mischief in state.^d

Of these judgments of such offences, many examples are of former times in the records of parliament, and out of them are here selected some such, as most of all conduce to the opening of the course of accusation, the form of the defendants answering, the usual ways of trial, and other incidents in their various kinds of judgments, which are found arbitrary in cases not capital; so that they extend not to the life or inheritance; and in capital offences so arbitrary, that the form of the death inflicted, sometimes varied from the ordinary course used by the common law for such offences.

The examples are under these two heads of offences, capital and not capital.

Under the first head are these cases of,

1. *John Mautravers.*
2. *Boeges de Bayons.*
3. *John Deverill.*
4. *Thomas Gurney.*
5. *William de Ocle.*
6. *John de Gomeniz.*
7. *And William de Weston.*

All condemned to death for treason, and all to be drawn and hanged, saving *Gomeniz*, who was judged to be beheaded, because he was a *banneret*, and had served the king in his wars.

Under the second head are these cases of

1. *John at Lee*, steward of the household.
2. *Richard Lions.*
3. *William lord Latimer.*
4. *William Ellis.*
5. *Chichester and Botesham.*
6. *Alice Pierce.*
7. *Cavendish* against Sir *Mich. de la Poole* chancellor of England.
8. The earl of *Northumberland.*

For writs of error; their power, and court in them may be seen in some special examples which are expressed; whereunto is added that of *Thorpe*, being speaker of the lower house, under *Henry VI.* which specially shews the power of judicature in the lords, although otherwise it tafts too much of what is wholly against the privileges of every member of the parliament at this day.

Parl. 4 Edw. 3. no. 3.

Judicium Johannis Mautravers.

Restouz les peres countes & barons assemblez a ceste parlement a Westminster si ont examine eltraitement & sur ce font assentuz & accordez que John Mautravers si est cupable de la mort Edmon counte de Kent le uncle nostre seigneur le roi qore est come celui que principalement traiteroulement & fausement la mort le dit counte compassaisseit que la on ledit Johan savoit la mort le roy Edward in pur quant le dit John per enginoule manere & per les fausses & mauvoise sotiletes fist le dit counte entendre la vie le roi le quel faus compassement fust cause de la mort le dit counte & de tut le mal que sensuist. Per qoi les susdite peres de la terre & juges en parlement ajuggent & agardent que le dit Johan soit treyne & pendu, & decolle come trefour quen part qil soit trove. Et prient les peres susditz a nostre seigneur le roi qil voille comander que briefs soient faitz de faire publier & crier per tut le roialme que qi purra prendre let dit Johan vis & le mefne au roi il avera mill marcs & si per cas ne purra estre pris vis que qui porte fa teste il avera cink centz livres du donn le roi.

No. IV.

Judicium Bogonis de Bayons & Johannis Deveroil.

Estre ce autiel juggement est acorde que soit fait de Boeges de Bayons & Johan Deveroil per la cause susdite, & que qi purra prendre le dit Boeges vis & mefne au roi avera centz livres ou que porte la teste il avera centz marcz: & que qi purra prendre le dit Johan vis & mefne au roi avera cent marcs & que qi porte la teste avera xl livres du donn le roi.

No. V.

Judicium Thomae de Gurney & Willmi de Ocle.

Item, Juggement est assentuz & accorde de Thomas de Gurney & William de Ocle par la mort le roi Edward pere nostre seigneur le roi qore est, que fausement & traiteroulement lui murdrerunt & que qi puisse prendre le dit Thomas vis avera c livres, & que qi porte la teste

c marcz. Estre ce que qi puisse prendre le dit William vis avera c marcz, & que qi porte la teste si per cas ne puisse estre pris vis il avera xl livres du donn le roi.

Par. 1. Rich. 2.
Gomenis, Weston.

Item, Per la ou supplie est per les communes que tous ceux quant renduz & perduz chastels ou villes per de la per verray defaute de capitains puissent estre a response a ceste parlement & selonc leur desert fortement punis per agard des seigneurs & baronage eschievant le malvoise en sample qils ont donez as autres que sont gardeins des villes & chastels, comande est a sire *Alein de Buxhall* constable del tour de Londres que il face venir devant les seigneurs en parlement a Westminster le vendredy le xxvii jour de November lan suidit *Johan sire de Gomenis & William de Weston* pris & detenez en la dite tour a comandement nostre seigneur le roy per cause qils avoient perduz & renduz tielx chastels & villes as enemys nostre seigneur le roy pur y respondre sur les articles que leur seront surmys par la dite cause de part nostre seigneur le roi. A quel jour de vendredy les ditz *Johan & William* amesnes par le dit constable devant les seigneurs avant ditz en plein parlement seauant en la blanke chambre ils font severalment arefoncez a comandement dez ditz seigneurs par sire *Richard le Scrop* chivaler seneschall del hofre nostre seigneur le roi en manere com sensuit.

William de Weston vous empristez dez lui trespuissant prince que Dieux assoile, sire Edward jadyz roi Dengleterre aiel nostre seigneur le roi qore est de sauvement garder a lui & a ses heirs rois Dengleterre chastel de Outhrewyk sanz le surrendre a aucuns, si non audit aiel ou a ses ditz heirs ou per comandement de lui ou de ses ditz heirs. Lavez vous *William* qestes home liege nostre seigneur le roi en temps de mesme nostre seigneur le roi qore est verray heir au dit aiel delivrez & surrenduz as enemys nostre seigneur le roi sanz comandement de lui en arressemment de lui & de sa corone & del estat de son roialme Dengleterre encontre vostre liegeance & emprise suiditz. Que veuillez a ceo dire? Sur quoi le dit *William* dist, qil avoit mys ses responses en escript; & myst avant une cedule contenantz plusieurs choses contenuz deinz ycelle, & vuez & lieuz la dite cedule en plein parlement. Sur ce lui fust demande par le dit seneschall, sil y myst avant ceste cedule pur final respons en cel partie ou non, & sur ceo le dit *William* priast la dite cedule lui estre rebaille, & le metroit einz sa response final, quelle cedule par la dite cause lui estoit rebaille, & puis apres ledit *William* myst avant la dite cedule ove un addition mys en ycelle en plein parlement pur finale response en celle partie. Le tenour de quel cedule est tiel come sensuiy.

A tresage conseil nostre seigneur le roi & as autres nobles & communes du parlement supplie &

monstre *William de Weston* que com il soit accule de ceo que len deust malvoisement aver rendu le chastell de Outhrewyk le quel il avoit en gard du baill & assignement nostre seigneur le roi: plesé a vostre sage & just discretion avoir de ceo le dit *William* excule pur le causes genfuent. Primerement vous plesé remembrer, que com le dit *William* estoit nadgairs garni par un espye que un grand poair des enemys viendroit sur lui pur le dit chastell assef' ove tresgrandes & tres grevous ordinances, sur quoi le dit *William* maintenant par son atorne & par ses lettres requist au dit conseil, qil leur plust de forcer le dit chastel du pluis des gentz pur la defense & la sauve garde dycell, eiant regard que la garnison du dit chastel, qadunqe estoit, ne fust ny suffisant de la moyte pur la multitude de si grande force en si large place resister, mais au finale neputant il nen poiat du dit conseil aucun focour avoir, & ensi le dit *William* non pas en la defaute estoit lessé sanz suffisancez des gentz pur le ditz chastel long temps garder & defendre; dont il vous supplie que prendre car veuillez juste & benigne consideration. Item plesé vous savoir coment par un lundy heure de prime viendront les enemys pur le dit chastel assef' a la nombre entour mmcc homez darmez & dccc arblasters de Genevoys oveque mmm de la commune du payz, ciantz ix gros canons un grand engyn & un trebuchet outre aucun mesure que leu avoit unges veu par devant en celles marches, & melme leur maintenant grande partie des gentz darmez & arblasters avantditz viendront devant les portez pur le dit chastel assailler & a ceo point estoit vu chivaler du leur tuez, lui, quel fuit coulyn au seigneur de Clifton, a ceo que len disoit & plusieurs autres aussi fuerent adonques que tuez que naufriz; & deins brief temps apres ils comencez a traire & getter de leur canons & engyns & ensi continuerent de jour en autre leur assalt cestassav' markly, mecredy, jedy, & fuerent adonques les murs & les mesons du dit chastel rontez & partutez en plusieurs lieux; & ils avoient aussi par force trenche les fosses dudit chastel en troys lieux si que leawe sestoit del tout issue & en cel nuyt vynt une grande partie deaux, & par force hront foire & abatre les barres si que lendemain que feust vendredy, ils vindrent au point de jour ove tout leur effors pur le dit chastel assailler: mais ove laid de Dieu ils seurent encore hostez par force de leur assalt, & dun partie & dautre y avoit des mortz & des blesses. Et melme le jour le mareschal de *Burgayne* parla au dit *William* & as autres del dit chastel rendre sur qui cantz consideration a ceo que le dit chastel ne se poiat tenir, qui pur la petitesse des genz qui pur ce, que les murs en plusieurs lieux seurent ensieblez par leur merveillousez ordinances, trete fust oveque les seigneurs au syn; que le dit *William* oveque ses compaignons lavivoient contre lendemain, & ensi alors le departiout. Item melme celui myt les enemys firent atrerere toutes leurs ordinances des engins trebuchet & canons & dez fagotz & elielx ove tout plain des autres jusq; pres de fosse du chaste

stel avant dit; & lendemain que feust samudy ils se firent tout plainement ordiner d'assailier la place & lors primerement ils manderent un herauld au dit *William* pur savoir, si le dit chasteil leur serroit rendu ou non. Sur quoi le dit *William* par lavis des plufages de ses compaignons eiant consideration coment ladit place estoit de leur ordinances destout & enfebli, & auxi qils feurent poi de gent pur la defense, a ceo que xii de leur compaignons feurent a celle temps que mortz que nautrez que maladez; si que il ne vemyt des toutz gentz de la garnison en faute pur soi defendre forsque; seulement xxxviii & pur ceo par commune assent le dit chasteil, que plus ne se poet tenir, fust par force rendus pur les vies hommes & leurs biens salver. Et que toutz cestez choses avant ditz sont verraiez, le dit *William* se mettra a son provee selons voz discretz ordinances. Item fait a remembrer que quand le dit chasteil fust ensi renduz come par dessus est dit, certains gentz de Franceys bargainerent oveque; le dit *William* pur ses vitailles illoques achater ensemblement oveque; certains prisoners queux le dit *William* tenoit deins le dit chasteil emprisonnez, queux choses il rescue de leur pur son paiement mille & cyng centz francz; des queux il paia a ses compaignons pur partie de leur gages, que leur fust aderere dun quart del an & dim. dclxxviii. francs. Item puis fust paie a Caley pur vitailles du dit chasteil avant ceo temps dues cccc & xlii francs. Item pur la passage du dit *William* & de ses compaignons tangez Engleterre; auxi & pur les dispenfes du dit *William* esteant a Caley cxxxv francs. Et pur ce supplie le dit *William* queiant regard de justice & benignite coment par envieuse suggestion il ad estez contre toutz reison accuse & dont de son estat & de son nom par grant peche des mesdisantz il est trop arieriz, eiant auxi consideration coment de ses propres biens il ad pur la greignour partie paie ses compaignons pur leurs fecdz, que leur fuit due, come est dessus dit, & auxi des grandes costages, qil ad deu devant ceo temps pur le dit chasteil vitailier, dont il ad baillie ses obligations en plusieurs lieux & doit grandes sommes si qil est des toutz partz deffait si vostre juste benignitee ne lui socour: vous plecte pur Dieu & pur petidoreigner ensi pur lui si qil purra parmy vostre discrete noblesse recoverir son estat & ses bienz.

Item le dit *William* Welson monstre coment le primer iour quant les enemys vindrent devant Arde, il sen ala en haste a Caley devant le capitaine, & lui pria de plus de socour, & aide des gentz pur meulx garder son fort de Outhrewyk & defendre, si les enemys y venissent; & le capitaine lui respondist brevement, qil ne lui delivraist ne bailleraist socour ne aide a dit temps pur ceo qil soi doutroit mesmes que les enemys venissent devant la ville de Caley.

Et vuez & luez la dit cedule en plein parlement. Maintenant apres estoit le dit *Johan* arcevoez illoques par le dit seneschal en la manere que sensuyt.

Johan sire de *Gomenis* vous empristes sur de lui trespuissant prince, que Dieux assoile, sire Edward jadyz roi Dengleterre aiel nostre seigneur le roi qore est, de sauvement garder a lui

& a ses heirs rois Dengleterre les ville & chasteil de Arde, sans les susprendre a aucun si non au dit aiel ou a ses ditz heirs, ou par comandement de lui, ou de sez ditz heirs, les avez vous sire de *Gomenis* en temps de nostre seigneur le roi qore est verray heir au dit aiel delivres & susrenduz as enemys nostre seigneur le roi sans comandement de lui en arrisement de lui & de la corone & del estat de son roialme Dengleterre encontre vostre empriste susdit. Que veuillez a ceo dire?

Sur quoi disast le dit *Johan* que les ditz ville & chasteil de Arde estoient si febles qil ne les poast bien garder contre grand poiar desenemys qestoit illoques prest d'assailier mesme le ville & chasteil, & pur ceo y fist assembler toutz les chivalers esquires & autres esteantz en la dit ville & leur disast les periles du dit ville & la force des ditz enemys & de commune conseil & assent des ditz chivalers esquires & autres il se issa a les enemys pur traier oveque; eux pur savor les liegez nostre seigneur le roi, esteantz deins les ditz ville & chasteil de Arde, sanz ceo que il riens prist pour la surrendre dez ditz ville & chasteil de Arde.

Sur quoi un Geoffrey Dargentine chivaler disast en plein parlement au dit *Johan*; que le dit Geoffrey estoit a celle temps en la dit ville en compaignie ove le dit *Johan*; & que les ditz ville & chasteil Arde ne feurent unges delivres ne susrenduz par son conseil ne assent; mes quil estoit tout dys prest des morez & viver sur la sauve garde dyelles, & ceo offrit le dit Geoffrey a prouver que il vdroit de dire.

Et outre suite demande au dit *Johan* si y vdroit riens autre chose dire & il dit que non. Sur quoi le dit conestable estoit charge sur la sauves gardz des ditz *Johan* & *William* tanq; alendemeyn la samedi prolochin ensuant & de les sauvement remesner devant les ditz seigners en le dit parlement as lieu & jour susditz.

A quele jour de samedi ceste assavoir le xxviii jour de Novembr. lan susdit, estoient les ditz *Johan* & *William* remesnez en dit parlement al lieu susdit & leur estoit monstre severalment par le dit seneschal a mesme le jour a comandement des seigners avantditz coment sur les responsez que les ditz *Johan* & *William* avoient donez en le dit parlement come dessus est dit, les seigneurs du dit parlement ceste assavoir, le roi de Chasteil & de Leon & duc de Lanc. Edmond counte de Canteb. Edmond counte de la March, Richard count Darundell, Thomas count de Warr. Hugh count de Stafford, William count de Suffolk, William count de Salisbrie, Henry count de Northumberland, Johan sire de Nevill; Roger sire de Clifford & plusieurs autres seigneurs barons & banerettes, esteantz audit parlement avoient assemblez & avisez de temps, que les ditz responsez feurent donez en parlement le vendredy tanque y ce samedi al heure de tiercez des choses touchantz les responfes avanditz & vuez & examinez diligentement les ditz responfes & autres articles touchantz celles matirs. Et eue sur ceo bone & meure deliberacion & deue information des plus vaillantz & plus discretz chivalers & autres, esteantz en le dit parlement estoit dit adeprimen en manere com sensuyt au dit *William* par le seneschal recitant les choses

AVANT

avant ditz touchantz le dit William.

Y semble a les seigneurs avantditz que vous William que avoiez empris de sauvement garder le chastel de Outhrewyk com defus est ditz l'avetz vous William sanz null dureste ou defaute de vitaillez malement deliverez & fustenduz as enemys nostre seigneur le roi par vostre defaute demesme contre tout plain de droit ou de reison & en contre voz liegance & empris fuiliditz & eue par deue informacion en tien cas que par la ou nadgairs le baron de Greytloek qestoit seigneur & un des piers du roialme avoit empris de sauvement garder al avant dit aiel la ville de Berewyk le dit baron apercevant apres le dit aiel soi adresser a chivacher ad roialme de France le dit baron sanz mandement du dit aiel, remist la dit ville de Berewyk a un vaillant elquier *Robert de Ogle* com lieutenant au dit baron pur sauvement garder la dit ville de Berewyk au dit aiel ; & le dit baron sen ala com chivalier home as parties de France au dit aiel ; & illoques demora en sa compaignie, survient que un assaut de guerre estoit fait a la dit ville de Berewyk per les Eileotz & le dit Robert com lieutenant du dit baron la defendi forciblement & a darrein, par tieux fortz assautz meisme villes estoit pris fur le dit Robt. & deux des filz le dit Robt. illoques tuez sur la descense dycell nient miens a cause que le dit baron avoit melmes empris de sauvement garder meisme la ville au dit aiel & fen depertust delloques sanz mandement de meisme laiell, & la dite ville de Berewyk estoit perduz en absence du dit baron, lui esteant en la compaignie du dit aiel, as parties de France come dit este estoit ajugge par ladvis du dit aiel le roi de Chastell que si est les nobles duces & countes, queux Dieux assoile, Henri iadys duc de Lancastre, les countes iadys de North & Stafford, & sire Walter de Manny, que la dite ville estoit perduz en defaut dudit baron & per celle cause il auroit jugement de vie & de membre & que y deusse forfaire tout quil avoit, & a celle jugement rendre avoit le dit seigneur Walter les paroles per commandement du dit aiell. Queux chosez consideretz & ceo auxi que vous William fustendistez le dit chastel de Outhrewyk as enemys nostre seigneur le roi avant ditz sanz nulle dureste ou defaute des vitailles contre voz liegance & emprise fuiliditz les seigneurs avant nomez scantz cy en plein parlement, vous ajugent a la mort & que vous soiez trainez & penduz ; Mez pur ceo que nostre seigneur le roi nest uncore enforme del manere de celle jugement l'execution enterra mys en respit, tanque le roi ent soit enforme. Sur quoi comande est a dit consteable de sauvement garder ledit William tanque il eit autre mandement de nostre seigneur le roi.

Et quant au dit Johan sire de Gomenys touchant les responez avant ditz lui estoit monstre per le dit seneschal coment les ditz seigneurs favoient assemblez & aviez dez ditz responez, come defus est dit, & outre lui estoit monstre coment que au temps que sire Rauf de Ferrers chivalier avoit le gard des ditz ville & chastell de Arde la dite ville de Arde n'estoit si fort par la moyte qele n'estoit au temps que le dit Johan la fustendist & le dit Rauf avoit eu mandement du dit aiel de

les fustendre pur la felleste dycelle avant ceo que le dit Rauf soi mettroit a tres grand peril pur la sauve gard dycelles, nientmoins le dit Rauf les tenoit & defendist foreiblement contre un tresgrand & fort assaut de guerre ; Et eue fur ceo & les chosez avant ditz & autres evidences touchant les responez du dit Johan en celle partie estoit dit en manere come sensuyt, au dit Johan esteant en parlement par le dit seneschall recitant toutz les chosez avantditz touchantz le avant dit Johan & auxi le avantdit jugement du dit baron & la cause dycelle en manere come defus.

Y semble a les seigneurs avant nomez scantz cy en plein parlement, considerantz vous responez en cell partie & les examinemantz & enformacions fur ceux come defus & eiant regard auxi a ce que nadgairs, outre le nombre des gentz par queux aviestes autrefois empris de sauvement garder les ditz ville & chastell xx homez darmez & xx archers vous seurent envoiez as ditz ville & chastel de Arde en asforcement dy celles felons vostre request ent fait as certains seigneurs nadgairs esteantz en message a Caley de per le dit aiel & a ceo auxi que au temps qil estoit a vous dist perle roi de Chastell que si est que si vous ne les purroiez bien garder vous ne les deussiez en nulle manere prendre a garder, & un autre les auroit a garder que les vodroit emprendre de sauvement garder audit aiel et a ses heirs avantditz, & vous empristez de les sauvement garder sanz les fustendre a nully si non per manere come defus est dit. Et ore vous Johan sanz nulle dureste ou defaute de vitaille ou de artillerie ou dautres chosez necessaries pur la defense dez ditz villes & chastel de Arde sanz comandement nostre seigneur le roi malement lavetz deliverez & fustenduz as enemys nostre seigneur le roi per vostre defaute demesme contre tout plain de droit ou de reison, & encontre vous empristez fuiliditz per quoi les seigneurs avantditz cy en plein parlement vous ajuggerent a la mort & pur ceo qestes gentil home & baneret & avetz servy audit aiel en les guerrez & nestes liege home nostre seigneur le roi, vous ferrez decolle sanz autre jugie avoir. Et pur ceo auxi, que nostre seigneur le roi nest encore enforme del manere de celle jugement l'execution enterra mys en respit tanque nostre seigneur le roi ent soit enforme. Sur quoi comande est a lavandit consteable de sauvement garder le dit Johan tanque il eit autre mandement de nostre seigneur le roi.

Et a fait a remembrer que Geoffrey Martin cler de la corone fist meisme cest record & le delivraist escrit en ce present roule per sa main propre.

Parl 42. Edw. III. No. XXI.

William Latymer du countee de Dorset mist avant une petition en ce parlement en la fourme q'ensuit.

A nostre seigneur le roi & a son conseil monstre William Latymer del countee de Dorset, que come nostre dit seigneur le roi autrefois en la pestilence graunta al eveque de Salisbris la garde des manoirs de *Doulish* & *Denelish* en le dit countee en sa mein esteantz per la meindre age Robert filz & heir *Robert Latymer*

Latymer chivaler, ensemblement ove le mariage le dit Robert le filz, adonques esteant del age de seis ans, pur certeine sūme des deniers a luy paiez & rent annuel a paier. Qi estat le dit William Latymer avoit tanque monsieur *Johan de la Lee* adonques feneschal per procurement *Thomas de la Bere*, manda un *Richard de Jmworth* sergent d'armes en Dorsete au dit William del amefner a Loundres en fause garde come prisonier ove l'enfant avant dit. Cest assavoir le lundy prochain devant la feste de la nativite de seint Johan le baptiste, l'an nostre seigneur le roi qore est trent neofieme, & il ensi fist. Et adonques le dit monsieur Johan chargea & commanda le dit William de part roi, qil ne iroit hors de ville sur peine de mille marcz, tanque il en auroit de lui a departir. Et issint demora per un mois ensuant, & nulle congie ne peut avoir de ent departir, tanque il avoit sur-rendu le corps le dit heir la patente le roi adit monsieur Johan & le fait le dit eveque du purchas le dit William & outre fait un fait de relees a dit monsieur Johan & le conu en lechegier; Sur quoi le dit monsieur Johan lui commanda de tenir toutz les terres & tenementz avantditz tanque al seint Michel adonques prochain ensuant, pur une certeine sūme des deniers. Et adonques le dit monsieur Johan lessa au dit William la garde du dit manoir de Denelish rendant quarante livres per ann. & du remenant lui oulta, & des autres & tenementz que le dit heir avoit de son purchas, dont il fust seisi come prochain amy l'enfant, cest assavoir, *Pulham, Helton, Whit-church, Otford & Stokett*, & les ad a rente a dit William & as autres diverses personnes a sa volonte. Et issint par tiel duretee emprisonnement & arest, est le dit William mys a grantz meschiefs, tresgreves damages & pertez en grant anieusement de son simple estat, dont il prie remede.

As pointz de quele petition le dit *Johan de la Lee*, respondy & dist. Qe per cause que les manoirs, terrez & tenementz vel heritage leur compris en la dite petition, furent extenduz malement par l'eschetour & lessiez hors de la mein le roi a trop petit value a grant damage & deceit du roy, il pursuivy devers le roi & fist reprendre mesmes les manoirs terrez & tenementz en la mein le roi, la garde de queux manoirs, terres, & tenementz & le mariage du dit heir, le roi lui grauntea tanque al age du dit heir & issint les tient il du grant le roi.

Quele respōs fust avys as seigneurs non resonable & moins sufficant, par cause, que le dit William fust oultez de la gard & mariage sufditz sans proces & respōs & que le roi avoit graunte a devant la garde de mesmes les manoirs ove la mariage du dit heir al eveque de Sarum tanque al plein age du dit heir, a quele graunte le dit William ne fust partie: Quele chose le dit Johan ne dedist point & per tant le dit William sanz coupe de deceite ou damage par lui fait au roi celle partie.

No. XXII.

Et aussi fust le dit Johan mys a reson devant les seigneurs de ce que au temps qil estoit feneschall del hostiell le roi, il fist attacher diver segentz per leur corps aucuns per sergant d'armes, & aucuns per autre voie, come William Latymer & autres, & les fist venir devant lui mesmes come devant le conseil le roi en places ou il lui plust hors de cheiscun place le roi accustumez a respondre de diverses choses dont la conuissance dult apperteiner as places le roi a ce ordeinez contre la lei & les usages du roialme.

No. XXIII.

Et aussint qe per la ou lauctorite du feneschal estant deinz la verge il fist attacher divers gentz dehors la verge, come *Johan Godard* & autres a respondre en la mareschalise de chose faite dehors & aucuns fist prendre & mander a la tour de Loundres de sa auctorite demesme sanz commandement le roi come *Johan Sibie, Efmond Visdileu* & autres.

No. XXIV.

Ensement, per la ou *Hugh de Lauenham*, provour, qi avoit appelez certaines gentz de felonie & feust devant les justices le roi a Newgate & divers gentz areinez a sa fuite de queux aucuns le mistron'en pais & aucuns se defendierent per leur corps & demorerent en prison come la lei demande; laquele appellour feust leste aller a large per commandement le dit Johan contre la lei & commandement des justices. Et puis quant il avoit combatu en *Smetefeld* & fait son darrein & dult avoir este remefiez a la prison, par autres appeulx nient terminez, le dit Johan prist le dit Hugh de sa auctorite demesme & lui leste aller a large. Et aucuns nient appelez en roule de coroner a la suggestion le dit Hugh fist prendre & emprisonner aussi come il sceussent estez appelez.

No. XXV.

Ensement per la ou le dit Johan fust jurrez au roi & de son conseil il bargayna ove monsieur *Nichol Lovayn* la garde du manoir de *Reynham* en Kent, esteant adonques en la mein la dit Nichol per mendre age del fitz & heir Johan de Staunton per la ou per certains evidences come per lettres patentes du grant seel le roi come autres queux le dit Johan avoit & prist devers lui apparussint overtement, que le dit manoir estoit tenuz de nostre seigneur le roi en chief come del chastel de *Doune* & per tant la garde dicelle appartient au roi a grant damage & deceit du roi & encontre son krement.

No. XXVI.

Des queux pointz & articles il ne se poit duement ne sufficealment excuser per la lei. Et per tant fust le dit Johan commande a la tour de Loundres a y demorer come prisonier tanque il eit fait syn & ranceon au roi a sa volonte. Et dit fust a monsieur *Aleyn de Buxbull* consteable

conestable de la tour, qil preist garde de lui & issint departirent les prelatz ducz countes & barons & communes.

Et puis du comauement le roi fust le dit Johan fait venir hors de la tour en garde a Westminst. devant le grand conseil & autrefoitz examinez sur les pointz de la petition le dit William Latymer respondi & dist.

No. XXVII.

Que nostre seigneur le roi lui avoit comys la garde des manoirs terres & tenementz del heir susdit, tanque al age le dit heir, ensemblement ove le mariage le dit heir & aussi franchement come le roi mesme la garde lui dona, si franchement & entierment il la voleit, rendre en la mein le roi; & illoques devant le dit conseil la suffrendy.

No. XXVIII.

Per quoi del avys du dit conseil en consideration as pointz de la petition le dit William fust acorde & assentu per le dit conseil que les manoirs terres & tenementz & les corpz del avant dit deussant estre rescidez en la mein le roi, & livercz al dit William Latymer a tenir come il lestit du lees le dit eveque tanque al plein age leir fust, sefant au roi pur ycel en manere come il sefoit avant que le dit Johan lui ousta dieelle & que lettres patentes le roi faites al dit eveque de mesme la garde & mariage & les lettres le dit eveque de mesme la garde & mariage faites au dit William & renduz al dit Johan que le dit William per duretee & manace soient pleinement restitutez al dit William, & que l'enroulement de le reles au dit Johan par le dit William de mesme la garde & mariage issint per duretee & manaces fait & conu per le dit William en l'eschequier soit cancellez artez & anicentez & tenuz pur nul a touz jours, fauve totefoitz au roi son droit en temps avenir.

No. XVII.

Richard Lyons.

Primerement Richard Lyons marchaunt de Loundres estoit empechez & accusez per les dites communes de plusieurs deceites, extorsions & autres malz faitz per luy au roi nostre seigneur, & a son peuple, si bien du temps qil ad este recepirant a la maison & al conseil du roi, come autrement du temps qil estoit farmer des subfides & customes le roi. Et per especial de ce que le dit Richard per couvyne fait per entre luy & aucuns du prive conseil nostre seigneur le roi pur leur singular profit & avantage ent avoir ont procurez plusieurs patentes & briefts de lycence estre faitz de caryer grande fuyson des *leynes, peaulx launtz* & autres marchandizes ailleurs de per de la que a l'estaple de Caleyx encontre les ordenances & defenses ent faitz devant ceste heure en parlement en destruction de mesme l'estaple de Caleyx & del monyage illoques a grant damage du roi & del roialme Dengleterre & annuicissement de la ville de Caleyx avant dite. A auxint de ce qil ad mys & procurez destre mys sur les *leynes peaulx launtz* & les autres marchandizes certains nouvelles impositions sanz

assent du parlement; & celles impositions levez & colleiez grant piece a son oeps propre & al oeps de ceux qil sont de sa dite covyne entour le roi sanz la veue ou tesmoignance d'aucun contrerollour, & sanz ce qil y est chargez per record ou autrement forsque a la volonte, mais ent est tresorier & reseceivour tant seulement & le haut tresorier del roialme ne se ent medle de rienz; Et dit est comunement qil prent en certain x shel. en une parcel & xii den. en une autre parcell de cheicun saak &c. qamonte a une tresgrande somme per toutz le temps qil cur ad este reseceivour ou tresorier come dessus est dit. Et ensement d'une autre novelle imposition de quatre deniers per luy faite & mysle par cheicune livre de monioie a envoyer de per de la per Lambardz & autres marchantz per voie deschangege per la propre auctorite & sanz garranz ou assent du parlement ou autrement & meisme celle imposition de quatre deniers de livre, grant piece de coillast & gardast al oeps du roi nostre seigneur le roi ent de rienz paiez. Et auxint de diverses chevantes faitz al oeps le roi sanz cause necessarie & per especial d'une chevante que se fait ja nouvelment en Loundres de xx mille marcz pur queux xx mille marcz nostre seigneur le roi sefoit obligez de repaier xxx mille marcz & ce per le conseil le dit Richard & d'autres privez entour le roi, q'avoient covenantez avec les creancours d'avoir part du gain & destre parteners covertement al dite chevante; a la quelle chevante le dit Richard apprelast sa propre monioie & apres gainast per voie de usurie du roi son seigneur, de qi conseil il estoit demurrez devant grant quantitee de monioie en grant damage & deceite du roi. Et auxint de plusieurs autres extorsions faulxmes deceites, oppressions, champerties & maintenances faitz a nostre seigneur le roi & a son peuple cheicune parte del roialme sibiens du temps que le dit Richard estoit farmer des subfides & customes le roi parmy le roialme & denaturez issint devers lui & son conseil & tresorier ou reseceivour des dites nouvelles impositions come autrement per preignant sur lui notoirement en toutes les dites choses poair roial, que ce fust horrible chose tout herrecer. Et auxint per la ou le roi nostre seigneur ad este dettor de record as diverses gentz de plusieurs grandes sommes de deniers si ad le dit Richard per lassent d'autres privez entour le roi de sa dite covyne fait bargainer plusieurs tieux dettes, aucuns a la foitz pur le disme denier & a la foitz pur la vintisme ou centisme denier & faitz procurer le roi de paier le dette entier & issint per ses tielles subtilites & pur son singular profit son sibiens le roi nostre seigneur come les dites dettes mallement deceuz. Et per especial le *prior* de saint *Johan Jersusalem* en Engleterre a qile roi estoit dettor d'une certaine somme & le dit Richard ent avoit xxiv marcz pur brocage pur fair le dit prior avoir paiement del remenant, et une autre foitz del seigneur le Despenfer a qile roi estoit semblablement dettour & le dit Richard avoit de luy per mesme celle manere une autre grande somme de deniers & issint de plusieurs autres en grand deceite esclaudre & vilenie du roy & de sa courtte.

No. XVIII.

A quoi le dit *Richard* present en parlement dit que quant al dit chevant fait al roi de les xx mille marez avant ditz il y est outrenment sanz aucune coulpe; & puis dit il, qil nent avoit unges profit ne gain ne appreisast unges riens a la chevante avant dite, en monoie ne en autre chose, & ce fust il prest de prover per toutes les voies resonables come voleit demander. Et quant a les ditz impositions de v. *shell*. & xii. *den*. al saak de leyne &c. & quatre deniers al livre de monoie il ne se poait clerement excuser, qil ne les avoit issint levez & collez & ent pris devers luy partie, cest assavoir xii. *den*. de chescun saak de leyne &c. mais ce fist il, il dist de comandement nostre seigneur le roi expres & a la priere & assent des merchantz qi tielles licences demanderent. Et quant al remenant dycelles impositions, il les avoit entierment fait delivrer al receivoir de la chambre le roi & ent plainement accompte en ditte chambre. Et fust dit al dit *Richard*, qil y baillast avant son garrant per qi auctorite il fist les dites choses, mais nul garrant ne auctorite mist avant en parlement souz le seal du roi n'autrement, fors; seulement qil dit qil en avoit comandement du roi mesme & de son conseil, del faire. Et lur ce fust tesmoigne overtement en parlement que nostre seigneur le roi ent avoit dit per expres le jour devant a alguns seigneurs cy presentz en parlement qil ne savoit coment ou en quelle manere il fust devnuz en tiel office devers lui, & que puis est il nel constult mye pur son officr. Et quant as autres articles ledit *Richard* ny fist nulle response einz dist, que sil y eust drieux trespasses ou messait il se mist en la grace du roi nostre seigneur.

No. XIX.

Par quoi le dit *Richard* est gardez a la prisone a la volonte du roi & desire mys au fyn & raunceon selon la quantitee & horribletee du trespas & qil perde sa franchise de la citee de *Loundres*, & jammais ne soit en office du roi n'approche au conseil ne a lostel le roi. Et sur ce autrefoitz le dit *Richard* estoit mandez devant les seigneurs du parlement & y fust dit a luy que sembloit as seigneurs, que ses malfaitz estoient si grandes & horribles qil n'estoit pas suffisant de faire satisfaction. Et tantost le dit *Richard* se submist en la grace du roi son corps, ses terres teneumentz biens & chateaux. & y voloit & gaurast, que son corps terres biens & chateaux fuissent a la volonte du roi, dent ordeiner & faire ce que lui pleroit, requirant al roi de lui graunter son vivre si luy pleroit & si ne lui plust mie que seist de lui & de quanq; il ad pleinement la volonte. Par quoi il est auxint gardez que touz ses terres teneumentz biens & chateaux soient seizes es mains du roi, & le corps demore en prisone a la volonte du roi.

No. XX.

Et quant a les extorsions faitz per le dit *Richard* ou les deutes, du temps q'il estoit *Baron* des dites subsidez ou custumes, come dessus est dit; ordene est en parlement que bone enquerre se face per suffisantz gentz en toutes les portz d'Engleterre.

No. XXI.

Le sire Latymer.

Item, *William sire de Latimer* estoit empesché & accusez per clamour des ditz communes de diverses deceites, extorsions greivances & autres mals faitz per luy & autres des soens & de la covyne, du temps qil ad demurrez devers le roi nostre seigneur, siben en Bretagne quant il y estoit en office ovclq; le roi, come autrement en Engleterre du temps qil ad este chamberlein & du prive conseil meisme nostre seigneur le roi. Primerement de ce que quant le dit sire de Latymer avoit este longement caperain de *Becherel* & officier per aillours en Bretagne, si avant que au drain la paix ou trieves se firent, & sur ce criez fuist & publiez de per le roi pariny Bretagne; que nully Englois n'autre dehors prendroit aucuns vivres vitailles n'autre riens des personnes des villes chasteux ne d'autres, si non qils paiaissent prestement pur ycelles nene ferroient prendre ou ranceoner nulle persone ville fortresse n'autre bien, pur peine de quanq; ils purroient forfaire. Et nient contrefaisant tout ce, le dit sire de Latymer & ses lieutenantz ou officiers firent prendre torcenouement & par force des diverses gentz du pais plusieurs vivres & vitailles a grant value, sanz rien paier, & auxint firent ranceoner plusieurs paroches & ent pristrent & rescurent ranceons tanq; a la sonne de quatre vyntz & trois mill livres, dont le roi nostre seigneur n'avoit unges riens, a grant damage & villenie du roi & oppression du poeple es dites parties & encontre les crie & defens avant ditz; Sicome en une lettre faite & sealles des seals des plusieurs seigneurs de Bretagne appellee *Rogman* & envoie en Engleterre a nostre seigneur le roy dessus dit puis pleinement appiert. De quelle *Rogman* les communes prirent davoit la voue en parlement & celle requeste fust grauntee mais le dit *Rogman* nene poait estre trovee en aucune manere ne homme ne savoit dire pur veritee ou il estoit devenue. Et encores autrefoitz il estoit accusee de ce que ses deputez ou lieutenantz ou dit temps a *Betherell* & *Phymmeson* avoient pris nonduement illoques cent & l. mill escutz d'or dont le roi n'avoit unges riens ne restitution aucune ent fust fait a parties de queux celles sommes furent prises, de quelle fait une bille estoit bailee avant en parlement, en la fourme que sensuyt.

No. XXII.

Fait a remembrer que les parocfs qi soleient estre raunsonnez a *Betherell* & *Plummeson* par temps des trieves ont paiez, a tant a monsieur *Johan Pert* constable de *Betherell* dessous le sire de Latymer a Willam son fitz & Huchoun de Middleton receivoir de la dite ville dessous le sire de Latymer durant le temps de quatre annz depuis que le sire de Latymer departi hors de Bretagne.

La somme de an en an xl mill frankes.

Et auxi le dit constable William & Huchoun ont rescuz de ransonez qi soleient estre ransonez

fonez par le guerre a plurir niell & a chasten blank tant que eust bien paieiz tous les souldiours de la dite ville.

La somme L mill fraunks.

Et auxi le pais de Bretagne ont paieiz au dit conestable William & Hugh pur la mort de diverses gentz nostre seigneur lige qi furent tueiz sur le pais de Bretagne.

La somme xxx mill fraunks.

Et auxi le dit conestable & William son fitz avoient leveiz sur la pais de Bretagne pur le or monsieur Jakes de la Plaunche perdatz vers Engleterre.

La somme xii mill fraunks.

Et auxi le dit William pur il perdatz xx marcz en le isle de Jernesey en un nief, & pur ce il leva sur les raunfonez de la dit Betherell.

La somme iii fraunks.

Et auxi Robert de Ravenston, son garson embla une senitour de argent & pur ce le pais du Bretagne seurent raunfonez.

La somme ii mill fraunks.

No. XXIII.

Et auxi le dit conestable William & Hugh rescivoir de la dite ville ont rescueiz par diverses soitz pur vitailles venduz come flour, vyn, & charz, & autres vivres la somme x mill fraunks & plus; la quele veut fust perdition de voz pources liges & la ville de Betherell qar par les extorsions, que ils font sereiz a sustenir l'orible occision de le poure poeple auxibien come des gentil hommes fist la dite vill perdre; Sur qui ils supplient a nostre seigneur le roi & a son conseil de faire les ditz conestable William & Hugh venir & respondre de les rescites fustditz issint que nostre seigneur le roi puisse estre servy de ce que lui apent, & voz pources leges qi furent en le garniture du dite ville puissent estre paieiz de leur gages pur le tempz que ils furent en la dite ville, si plecter vous soit.

No. XXIV.

Et auxint le dit sire de Latymery estoit empeschez par le dit commune de diverses chevantes faitz al oepe du roi sanz cause necessarie, a grande perde & grevousse damage du roi. Et par especial dune chevante que le fist ore tard al oepe du roi par le conseil du dit sire de Latymer, Richard Lyons & autres de sa covyne de vynt mill marcz; pur quelles vynt mill marcz nostre seigneur le roi festoit obligez a ses creancours en dit cas de leur repaier trent mill marcz; & ce fuist fait par covyne des ditz sire de Latymer & autres faitz

privement avec meismes les createours davoit part del dit gain & dyestrel partenars au dit fait, souz couverture de meismes les createours qar y li fust surmys en especial, que la monioe du roi meismes en fa chaumbre dont le dit sire estoit alors gardein ou tresorier, & auxint la monioe propre des ditz fyre de Latymer & Richard si fust apprestee a ladic chevante faire.

Et auxint de ce que per semblable covyne perentre luy & le dit Richard, pur leur singuler profit & gayn, il ad procurez & conseillez nostre seigneur le roi, de graunter plusieurs licences per patentes & briefs de faire carier grant quantitee des leynes & peaulx launtz, as autres parties doultre meer, que a Caley, encontre les ordinaances & defens ent faitz avant ces heures en destrucion de l'estaple de Caley & del monyage illoques a grant damage du roi & del roialme d'Engleterre & annetissement de la dite ville de Caley.

Et ensemement de ce que per semblable covyne faite perentre luy & le dit Richard pur leur singuler profit il ad fait mettre sur les leynes peaulx launtz, & autres marchandizes de l'estaple diverses nouvelles impositions; cest assavoir, sur chefcun saak de leyne, &c. passantz aillours de per de la que a Caley parmys tielle licence, xi shell. & plus encontre les estatutz & ordinaances ent faites.

Et auxint de ce que pur son singuler profit & mal governaill entour le roy nostre seigneur le roy & son roialme ont euz & suffertz plusieurs autres grevances perdes damages & villaines, sanz nombre; Come del perde du ville & tort de seint Salveour en Normandie, & del dit lieu de Betherell & d'autres fortterces ja perduz quelles eussent este bien salvez & gardez si le roi ent eust este bien conseillez.

Et auxint des certaines epyes & autres selonns prisez & emprisonnez par le roi, & puis apres deliverez par le dit sire de Latymer de sa propre auctoritee, sanz la science & volentee du roi, preignant sur luy & enrocheant notoirement, en faissant les dites choses poir roial.

No. XXVI.

A quoi le dit sire de Latymer lors present en parlement dist, que salve a luy quanq; a lui doit estre salvez a luy come a un des peeres del roialme, tant en jugement doner come autrement en tempz avenir, si plect a nostre seigneur le roi & as seigneurs icy assemblez ent durra sa responce a celui, qi en especial lui vorra surmettre aucune des choses avantditz. Et puis apres par tant que nulle especial persone vorroit apertement accuser le dit sire de meismes les choses en parlement, einz que les communes vorroient maintenir les accusamentz en commune le dit sire de Latymer en exculacion de sa persone & declaration de sa fame dist.

No. XXVII.

No. XXVII.

Que voirs estoit qil estoit capitaine de Becherell & que une tielle paix & cry furent faitz en Bretagne de per le roi & que une enqueste y fuist fait & mys en escript & enfeales des plusours sealz des seigneurs de Bretagne, & envoiez a nostre seigneur le roi en Engleterre, quelle enqueste eist ilint appelle *Rageman*. Mais il dit que celle enqueste fust faite & procuree mains vraiment par Bretons & Francoys qi unges navierent le roi nostre seigneur ne nul autre Englois par haine & envie pur avoir destruire le dit sire fausement. Et il dit ore come autrefoitz avoit dit a nostre seigneur le roi quant il ent estoit semblablement empeschez devant le roi meismes que toutz les profitz queux il unges receust per luy meismes ou autrement en Bretagne ne passent en toutes choses la somme de dys mill. livres accomptez en meisme la somme de dys mill. livres toutz les profitz qil y receust pur les rançons del viscount del Roan & des autres prisoners queux il prist a la Bataille de *Orroye* & ce est il prest & toutdys ad este de prover par toutes les voies resonables q'ome de son degre & estat doit faire & doit ressembler a toutes gentz. Il dist pur voir que depuis que celle *Rageman* fust ilint fait par les enemys du roi & del roialme come defus est dit & auxint dehors le roialme que toutz gentz la doivent tenir de la meindre credence & reputation. Et encores il dit que celle somme de dys mill. livres dont il savoit devant submys & toutdys se vorra submettre en la grace de son seigneur lige, ne purroit il ja paier si noun qil vendist fa terre & vesselement & eust aide de ses lieutenantz & receivoirs en dit lieu de Becherell les quez y ont receux & eues tielles rançons encontre le dit cry si nulles y furent receux.

Et tost apres ce les communes oier ceste responce de submision prièrent as seigneurs du parlement pur le roi, que des ditz dys mill. livres execution fust fait tantost envers le dit sire de Latymer, come de chose passe parmy la dite submision delicome il conust que autre foitz il ent estoit empeschez & la dit submision estre fait par luy, come dit est, & ne monstre mye gree estre fait al roi ne nulle pardoun n'autre chose par la quelle il doit estre deschargez.

Et les seigneurs respondirent qe fa responce serroit reportez au roi nostre seigneur & sur ce droit ent serroit fait pur le roi.

Et quant a la dite bille baillie avant en parlement de les faitz ses ditz deputez ou lieutenantz a Becherell & Plymmeison le dit sire de Latymer dit qil y est outrement innocent & sanz coulpe. Q'ar il dist y del tempz que celle *Rageman* fust ilint fait & envoie a nostre seigneur le roi il ad demurrez continuellement en Engleterre par comaundement du roi meismes & rien ne receust unques des ditz lieux ne aillours en dite terre de Bretagne

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puis son departir dilloques n'en monioe n'en autre chose quelconque par les mains ses ditz lieutenantz ou deputez illoques ne par nulle autre.

Et les communes repliantz a ce distrent qe si fist il ou autrement y receurent les lieutenantz en noun de luy & prièrent qil fust chargez de respondre a nostre seigneur le roi pur les ditz lieutenantz & resece ivours illoques en cas qil meismes ne soient assez suffisantz. Et les seigneurs respondirent a ce qe ent prendroient avivement de sages de leye & sur ce ferroient droit chescune partie.

Et quant as dites chevances faitz al oeps du roi nostre seigneur sanz cause necessaire; Il respondi & dist, qil nassistent unques a ces sanz cause trop necessaire & grantement bufoignable.

Et quant a ce, qe luy ent est surmys de ceite faux covyne ou autre disloialtee pur profit ou part avoir; Il dist que ent est outrement innocent & sanz coulpe ne vnqes apprestat ne delivraist aucune monioe n'autre chose del roi ne del soen ne d'autry al dite chevante faire & ce fust il prest de prover auxint par toutes les voies come doit faire.

Et quant a les patentes & briefs faitez & grantez de passer leynes & peaulx launtz &c. aillours que a l'estaple de Caley: Il dist, que celles licences furent commencez devant son tempz avec le roi sibiën a Jenewe & Venice come aillours; Et puis il dist, que si rienz ent estoit fait en son tempz ce ne fust my fait par le soen conseil seulement einz par luy avec autres & ce encores pur un trefgrand profit al roi, dont il estoit loialment responduz en la chaumbre.

Et quant as nouvelles impositions; Il dist qe nulle novelle imposition unqes estoit mys sur les leynes quirs & peaulx launtz par luy de novel ne rienz ent paieiz plus al soen escient nulle part fors; seulement les subides ent grauntez en parlement si non a lynsance & espediale requeste & priere de ceulx que tieles lycenses demanderent les queux paierent voluntrifinment & sanz nulle manere compulsion xi shill. al saak & les x s cest allavoir al oeps du roi & les xii den. al oeps des clerz escrivantz & pursuantz les ditz licences de qi nouns il nest mye appris en certain. Et puis il y dist qil nent prist unqes rienz al soen profit demesne par luy ne par nul autre & ce fust il prest de prover par toutes voies resonables.

Et sur ce fust tesmoigneiz en parlement per monsieur Richard Lescrope chivalier, nadgaires tresorer nostre dit seigneur le roy, & par William Walworth de Loundres, que au tempz quant la dite chevante ce fist au roi de les ditz xx. mill. marez, le dit William Walworth profroit en noun de luy meismes & de ses compaignons marchantz del dit estaple de Caley al dit sire de Latymer de faire chevante a nostre dit seigneur le roi de dys mill. livres sanz rienz ent reprendre de entrees par userie ou autrement par covenant tielle q'ils y purroient estre repaiez de les ditz dys mill. livres en leur propre mayns des subides dues al roy de lours leynes & lors profcheinement apassers

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vers Caley & auxint par covenant que le roi leur grantast que nulles tielles licences ferroient grauntez desors de carrier leynes &c. aillours que a l'estaple de Caley.

A quoy le dit sire de Latymer respondist & dist, qil ne oiait unques de eux nul tiel profre & les autres affermantz la contraire jurerent que le dit William Walworth y fist a lui tiel profre.

Et quant a la perde dez dites villes & fortz & de la deliverance d'aucunes espies ou felons issint emprisonnez; le dit sire dit auxint, qil y eist de rienz coupable, & ce voet il prover & averser par toutes les voies raisonnables q'il doit faire.

Et sur ce plusieurs autres paroles & refons monstrez & parlez sibien en plein parlement come autrement devant les prelatz & seigneurs seulement sibien pur nostre seigneur le roi come pur la partie du dit sire de Latymer & plusieurs examinations ent faites sibien en prive come en apert apres longue deliberation ent eue fust jugement renduz en parlement vers le dit sire de Latymer en les paroles que sensuient.

No. XXVIII.

Pur ce qe le sire de Latymer est trovez en plein parlement en defaute per son singuler conseil & government encontre le profit le roi & du roialme, cest assavoir, de diverses chevantes faitz en perde du roi sanz cause necessaire, & auxint de patentes faites en destruction de lestaple des leynes & del monyage de Caley a grant damage du roi & del roialme D'engleterre & annuement de la ville de Caley, & ensement des diverses grevous impositions mises sur les leynes encontre l'estatut du parlement ent nadgairs fait.

Il est agardez per les prelatz & seigneurs en plein parlement a prisonne destre en garde du mareschall & faire fyn & raunceon a la volonte le roi.

Sur quoi la dite comune ad suppliez al roi qe pur ce q'il est trovez en tieux defautes par ses singuleres fustidz q'il soit oustez de toutes offices le roi & especialz & privez conseilz entour le roi pur tout temps.

Quelle requeste le roi ad ottoirre & le voet & grante.

No. XXIX.

Et sur ce le dit sire de Latymer trovast en parlement certains prelatz seigneurs & autres ses maynparnours durant le parlement de avoir son corps devant le roi & les seigneurs a respondre puis avant a les articles dont il estoit issint arettez souz certaine payne & forme comprizez en une cedula annexe a y cestes & par celle maynprise le mareschall D'engleterre luy lessist aler a large.

William Elys.

No. XXXI.

Item William Elys de grant Jernemuth est empechez & accusez en ceste present parlement en diverses maneres. Prinerement, cest assavoir, par la surmise des communes a luy faite, que

le dit William tantcome il y ad est ferme nostre seigneur le roi de la petite custume en port de grant Jernemuth & depute de Richard Lyons fermer del subside de vi. den. al livre grauntez al nostre dit seigneur le roi parmy le roialme de toutes merchaundizes passantz hors du roialme & entrantz en y celle pur la salue garde du meer & des merchauntz passantz par meer & de leur merchaundizes ad pris par luy & ses servantz sibien des Englois come des estrangers en dit port & les membres dycell par extorcion par colour de ses ditz offices plusieurs grandes sommes de deniers & autrement q'il ne deust avoir fait en grande prejudice & esclandre du roi & damage de son dit roialme & oppression & arrierissement de les merchauntz avantditz. Et par especial est furnys al dit William q'il avoit pris de merchauntz d'Escoce chacez par tempest en une nies chargez de diverses merchaundises d'Escoce a Kerkelerode deinz mesmes le port xxxiii livres par extorcion par la ou le dit merchaunt d'Escoce ne deschargeast nene veulloit descharger rienz de ses ditz merchaundizes neny veulloit avoir venuz la si non qil y fust chacez par tempest come dist est & celuy leust bien del faire parmy les triesnes d'Escoce que veullent que toutz merchauntz d'Escoce issint chacez par tempest deinz le roialme soient honestement trectz sanz mal faire a eux ou a leur biens en aucune manere.

Et le dit William Elys present en parlement dist, qe voirs estoit qil estoit un des fermers del dite petite custume & aussint depute a dit Richard del subside avant dit & qil avoit bien & loialment pris les ditz custumes & subsidies des merchauntz passantz & venantz selonc le purport des comissions ent faitz sanz ce q'il y prist ou fist prendre unques rienz par extorcion plus que ent fust due clerement al roi & ce fust il prest de prover per quelconq, voic q'il deust fair.

Et les ditz communes repliantz a ce distrent qe le dit William avoit mesmes conuz a eux en leur commune assemble en la maison de chapitre deinz l'abbeye de Westminster le jour devant q'il avoit rescueuz les ditz xxxiii livres & prierent que encontre sa conifance demesne faite fu overtment devant tantz des perones ne fust autre foitz rescueuz a dire le contraire. Et sur ce les dites communes amesnerent en parlement Johan Botild & William Coupere de Leyloft & deux autres les queux avoient paieuz a dit William Elys pur le dit marchant d'Escoce les ditz xxxiii livres pur puis plener enformation avoir de la matiere avant dite; Les queux Johan & William Coupere ent examinez en parlement diferent & conifurent q'ils furent obligez a nostre seigneur le roi & al dit William Elys par leurs lettres obligatoirs en les ditz xxxiii livres pur le dit Escott q'i fust leur host apaiers a certain jour pur le dit subside de vi. den. al livre duez de touz les merchaundizes en le dit nef tout fust il ensi que le dit Escott ay deschargeast unques riens come dessus est dit & au dit jour del paiement ils paiarent al dit William Elys les ditz xxxiii livres.

Et

Et sur ce les ditz comunes prièrent jugement de dit William Elys; Et le dit William Elys dit que coment il avoit receuz les ditz xxxiii livres de Johan Botild & des autres avantditz nient mains il ne les receut unques fors; supposant que celles furent duez & encores ce fist il souz condition tielle que si tost q'il eût eust brief ou autre mandement du roi nostre seigneur de la faire delivrance q'il le fist a eux tres voluntiers & sanz delay: Et outre ce il dist que brief lui vient de ent faire restitution al dit marchaunt & par vertue de mesme le brief il ent ad fait plene restitution a un Johan Fauxhide d'Escoce attourne generall pur les marchauntz d'Escoce come piert par un general releife fait au dit William Elys par le dit attourne, quele releife il mist avant en le parlement compenant que le dit Johan Fauxhide attourne general des marchantz d'Escoce releifast pleinement al dit William Elys toutes maneres d'actions reales & personales que le dit marchaunt d'Escoce ou nul autre marchaunt d'Escoce avoit ou aucunement purroit avoir vers lui pur aucune cause du mounde tang; a la fescance de mesme le relees.

Et ce veue & entendue fust dit per les seigneurs que le seal de relees ne fust mye autentique ne les parties d'Escoce ny furent mye presentez par ont homme ne poait favior si tiel attourne fust fait ou neinye ne si cele relees fust un loial relees on un relees torgez. Et outre ce fust dit al dit William Elys que coment que un tiel attourne general fust fait en veritee nient-mains le leye ne voet mye que attourne face relees general. Et sur ce mesme le relees fust baillez en la mayn du sire de Percy pur ent enquerre la plain veritee al prochein jour de marche vers Escoce & sil y fust trovez relees torgez que le dit William Elys fust bien puniz. Et les comunes prièrent que bone enquerre fust fait del dit William Elys & de touz autres d'putez del dit Richard Lyons parmy le roialme generalment. Et ce y estoit ottoirez par les seigneurs.

Parl. 1. Richard II. No. XXXII. XXXIII.

Item William Fitz Hugh orfeure de Londres mist avant en parlement une bille en la forme que sensuit.

A tres excellent & trefnoble seigneur le roy & a son trelhonour & trefage conseil monstrent les poveres communes de la mistier dorfeurye en la citee de Londres coment Johan Chichestre Johan Botelham & plusieurs autres grands & riches orfeures de mesme la mistier en mesme la citee pur leur compaillement & sotyll engyne deceyvablement firent plusieurs gentz de les ditz comunes enfailler severalment diverses obligations & ceux q'i refuserent de ce faire furent pris & emprisonnez & en peril de mort par grevoue manace des ditz grands & riches orfeures tanqils, avoient enselles severalment diverses obligations come lors poveres compaignons avoient fait devant a cause que les ditz poveres orfeures ne deussent overer achater ne

vendre a null mercer coteller jualler vphalder ne a nul autre denizein ne forein nul rien de leur ouereigue si non qils le vendissent a treble value ne que nul de eux deust porter vessell ceinture nautre chose dor ne dargent a nul seigneur dame ne a nul autre pur leur profit faire & sils firent que la payne compriz deinz les obligations encurreroit sur eux come devant le mair viscontz & aldermans de la dite citee par la confession des ditz riches orfeures feust provee. Sur quel debat non reisonablement isint moeve par bon mediacion & avis de dit mair & des plusieurs aldermans de la citee les ditz riches & poveres orfeures soy mistrent en arbitrement des trois bones homes pur final acord des touz les debatz & querrell entre eux moevez. Les queux arbitrouz assenterent sur certains pointz rehercez a les parties susditz & ordeignerent mesmes les pointz estre affirmez & enrollez en la Guyhall de Londres pur final acord tenir sanz contredit as touz jours & sur ce les parties susdites senterbaierent. Mais ore a celle accord les ditz riches orfeures ne voillent assenter ne suffrer que les ditz pointz soient enrollez & tenuz come les ditz arbitrouz ordeignerent. Et outre ce par leur procurement plusieurs mesfeisors ont de jour en autre plusieurs de les ditz poveres communes en agait de tuer que Dieu defend & auxi purchaier un novelle chartre encontre le dit acord & en defesance & annyntissement des ditz communes. Plese a vostre trefgraciouse feignorie ordeigner & comander que la dite acord püst estre afferme & tenuz finalment. Et que chartre ne null autre chose soit grante a eux en prejudice & annyntissement de les ditz poveres orfeures pur Dieu & en oeuvre de charitee.

Et sur ce les ditz Johan Chichestre & Johan Botelham & plusieurs autres orfeures de Londres vindrent en parlement & avoient oie de la dite bille & tantost estoit demandez en parlement del dit William Fitz Hugh sil vorroit maintenir la dite bille & trouver plegge de y faire & recevoir ce que la loy demande dist que si voloit il. Et puis apres pur ce que il ne poait trouver les plegges einz guerpiit outrement la dite bille si fust le dit William Fitz Hugh comandez a la Tour par agard des seigneurs du parlement.

No. XLI.

Item le xxii jour de Decembre durant encore ce present parlement Alice Perrers fust fait venir en mesme le parlement devant les prelates & seignors pur y respondre sur certains choses quelles pur lors serroient furnisces envers elle de part le roi. Et sur ceo par comendement des prelates & seignors du dit parlement monseigneur Richard Lescrop chivalier seneschal del hostel nostre seigneur le roi y rehercea en parlement en presence de la dite Alice une ordinance fait au parlement tenuz a Westminster le Lundy prochein apres le feste de Saint George lan du regne le roi Edward aiel nostre seigneur le roi qoreit cynquantisme en cellis

cestes paroles; Pur ceo que plainte est fait au roi que aucuns femmes ont pursuivy en les courtz du roi diverses besoignes & querelles per voie de meynenance & pur lower & par avoir quelle chose despieft au roi & le roi defende que desormes nulle femme le face & par especial Alice Perrers sur peine de quonque la dite Alice purra forfaire & destre bannyz hors du roialme. Et celle reherceall faite le dit seneschall furnist a dite Alice que sembloit as seignors du parlement gele avoit encourru la paine compris en la dite ordinance & auxi forfait encontre la dite ordinance en certein pointz & par especial en deux. Cest assavoir que par la ou monsieur Nichol Dagworth chivaler fuist ordeinez par le conseil du dit aiel daler en Irland pur certains chargantz boisoins que serroient profitable au dit aiel & a son roialve la dite Alice puis la dite ordinance faite come est dit tant pursuast a dit aiel en sa court a Havering que a sa singular pursuyste & procurement le dit Nichol fuist continerande & son viage de tout lesse a grand damage du dit aiel & de son dit roialme. Item que par la ou Richard Lyon pur certains mesprisions des queux il fuist convist al dit parlement tenuz le dit ann cynquantisme se submist al dit parlement en la grace du dit aiel cest assavoir son corps toutz ses terres & tenemens biens & chateulx & toutz ses autres possessions par qui le dit Richard fuist mys a prison & toutz ses terres & tenemens biens & chateulx & ses autres possessions avant ditz seizez en mayn du dit aiel des queux terres & tenemens il dona aucuns al counte de Cantebrygg & aucuns a monsieur Thomas de Wodestock ore counte de Buckingham a terme de lours vyes. Le quel aiel puis eiant pite du dit Richard lui voillant par lasset de son conseil fair grace lui pardonaft lemprisonnement de son corps & lui fist restorerz as certains de ses terres & tenemens biens & chateulx avanditz le quele pardon semblaft a dit aiel & a son dit conseil estre grace assietz. Nientmeyns la dite Alice pursuast tant a dit aiel en sa court a Shene que par sa singular pursuyste & procurement le dit aiel granta au dit Richard toutz ses terres & tenemens biens & chateulx avanditz ensemblement ove les ditz tenemens les queux le dit aiel avoit done as ditz countes a terme de lours vies come defuz est dist. Et outre ceo pardona a dit Richard ecc livres de certains arerages dues par le dit Richard en leschequer; & auxi lui granta mill marcz de son tresor a avoir de doun la quele pursuyste & procurement feurent contre lordinance avandite. Et le dit seneschal demanda la dite Alice coment ele se voudroit de cestes articles escuser.

La quele Alice respondist & dist que de cestes articles ele nest pas coupable & ce ele est prest daverer & prover par la tesmoignance de monsieur John de Ippe alors seneschal del hostel du dit aiel & William Strete adoncs counterollour du dit hostel monsieur Alein Buxhull chivaler Nicholas Carren a doncs gardein du prive seal du dit aiel & dautres que

feurent entour le dit aiel & pres de luy al temps que suppose est quele ensi deust avoir forfait & qi mieltz y seient ent la verite. Et fur ceo est jour done a dite Alice tanque al Mekerdy prochein enseuant. Et en la meme temps par l'assent des prelates & des seignors du dit parlement ordeigne fuist & assentuz que cestes articles ferroient triez par tesmoigne ou par enqueste de ceux que feurent del hostel du dit aiel par queux la verite purroit meultz estre conuz & enquis. Et fur ceo y feurent certains perones jurrez & examinez devant le duc de Lanc. le counte de Cantabr. le counte de la Marche le counte d'Arrundell & le counte de Warr.

Cestassavoir primerement monsieur Roger Beauchamp nadgaris chamberlyn du dit aiel jurrez sur les seintz evangiles & diligement examinez sur le article touchant le contermendement monsieur Nichol Dagworth & sur le autre article touchant le pardon & grace faitz a Richard Lyons dist par son serement; Que en presence de dame Alice Perrers une bille lui fuist baillie a Havering pur bailler au dit roi & aiel quele bille il prest & puis quant il avoit entendu gele contenoit le revocation de monsieur Nichol Dagworth d'Ireland pur ceo qil estoit enemy a monsieur William de Windesore a ce que la bille supposoit il respondist qil noosa ceo bailliez au roi pur ceo que le conseil avoit ordeine le contraire. Et la dite Alice lui requist & dist que hardiment le bailleroit au roi & meynenant le roi les demanda de quelle chose ils parlerent & monsieur Roger luy respondist dune bille que contient tiel matiere. Et meynenant quant le roi avoit entendu la bille il respondist que la petition fuist resonable & quant monsieur Roger replya que le conseil avoit ordeine ensy la contraire le roy respondist qil mesmes fuist sovcreyn juge & luy sembloit que la bille fuist resonable & lui comanda qil ferroit revenir le dit monsieur Nichol & ensi fuist fait mais quel jour ou mois ce fuist fait il ne soi recorde point. Et quant a la matiere de Richard Lyons le dit monsieur Roger dist qil ne fuist pas chamberleyn al heure & pur ceo il nent sciet rienz sinon par oy dire.

Item monsieur de Lanc. diligement examinez devant les ditz countes dist qil vient un jour a Havering & trova dame Alice Perrers illoqs & tantost monsieur Roger Beauchamp lui monstra une bille contenante le matiere susdite. Et bien tost apres quant il parla au roi & la matire fuist touche le roi dist que ne luy sembla mye reson qun enemy deust estre jure dautre & le duc respondist que tiel enemistee parentre eulx ny estoit encoires provez mais voirs estoit que le dit monsieur Nichol y estoit envoiez pur profit de la terre & de tout le roialme. Et fur ceo estoit ordeinez devant le roi que les ditz monsieur Nichol & monsieur William vendroient devant le conseil & si le dit monsieur William purroit prover aucune cause verroye de enemyte parentre eulx qadoncs le dit monsieur Nichol ny iroit mye & sil ny purroit prover

prover tiel enemistee qadongz l'ordinance de conseil ent fait avant eiterroit en sa force. A quele chose le roi fassentuz bien pur le heure. Mais tantost assailler de la chambre la dite dame Alice vient au duc & lui priaist chierment qil ne fust frist par aucune maniere le dit monsieur Nichol aller illoogs, qi respondist qil ne ferroit rienz autrement que defuz nestoit ordeinez devant le roi. Et quant ele y veoit gautre grace ny purroit avoir de lui se enpassa & lendemain matin quant le dit duc prist conge du roi en son lyt mesme le roi lui comanda sur sa benison qil ne fust frist en aucune maniere que le dit monsieur Nichol iroit vers Irland l'ordinance ent faite le jour devant au contrarie nient contrelteanz. Et ensy fuist le dit monsieur Nichol contremandez.

Et quant al article de Richard Lyons il dist en sa consience que la dite Alice si fuist principale promotrice du dit besoigne mais il ne fust pas present quant ce estoit faite.

Item monsieur Phelip de la Vache jurrez come defuz & diligement examinez dist quant al article de monsieur Nichol Dagworth qil noyast vnqs la dite dame Alice parler au roi de mesme la matiere, mais il oyast en lostel le roi la dite dame Alice faire grant murmur & dire que nestoit pas resonne ley que le dit monsieur Nichol fustoit enemy al avant dit monsieur William deust aler en Ireland pur enquerre & faire justice encontre lui & puis ne sciet il parler de ceste matiere. Mais quant al article de Richard Lyons, il dist qil fuist un jour a Shene quant le dit Richard fuist amenez devant le roi & qil fuist appelez a la chambre le roi pur oyer ceo qent deust estre fait; Et quant il entendoit la matiere il ne vendroit demurer einz il dist la chambre. Et outre il dist que feurent a lors dedeins la chambre du roi la dite dame Alice Nicholas Carren monsieur Alein Buxhull Waulter Walshe & plusieurs autres. Et dist outre que comune par lance fuist en la court que la dite dame Alice fuist grant aideur & amye en celle besoigne.

Item Nicholas Carren jurrez come dessus & diligement examinez dist qil fuist comandez de par le roi de venir a Shene au roi & la il trovast Richard Lyons le quel Richard & Nicholas feurent comandez de venir devant le roi a son lyt ou ils troverent dame Alice Perrers seant al chief du lyt & la fuist monstree que le roi vorroit pardonner a dit Richard CCC livres en quelz il estoit encores tenez au roi come des arrerages de son acompte en lescheber, & auxi que le roi vorroit doner a dit Richard mill marcz de son tresor & outre de faire pleine restitution de les tenemens queux il avoit done devant a ses filz de Canteburg & Wodestock come dissus est dit & sur ceo le roi comanda le dit Nicholas de dire de per lui as ses ditz filz sa volonte. Mais il dist qil ne se remembrast si ceste matiere fuist monstre a celle heure devant le roi par relation daucune autre persone ou par la bille du dit Richard illoegs lieue ou autrement par le dit Richard mesmes ou par le dit Nicholas; mais le dit Nicholas foi remembrast asse bien qil requist au roi qil ver-

roit faire venir dedinz les curtyns monsieur Alein de Buxhull & autres chivalers & esquiers que feurent adonges dehors pur refinoignir ceo que le roi avoit dist a dit Nicholas en les ditz comandementz & ensy fuist fait & adonges toutz les comandementz le roi feurent rehercez en presence de toutz y ceulx. Et quant al matiere de monsieur Nichol Dagworth il dist qil neust savoit rienz devant ceo que monsieur Roger Beauchamp lui envia qil deust faire contremander le dit monsieur Nichol.

Item monsieur Alein Buxhull jurrez semblablement & diligement examinez dist qun jour a Shene apres la darrein parlement il fuist appelez au roi ou il trovast dame Alice Perrers Nicholas Carren & plusieurs autres chivalers & esquiers que viendrent oveq; lui & illoques fuist rehercez par le dit Nicholas comment le roi avoit fait grace a Richard Lyons de ses tenemens queux estoient tenez par le counte de Canteburg & monsieur Thomas de Wodestock & lui avoit pardonez CCC livres de ses arrerages son acompte en lescheber & lui avoit donez mill marcz de son tresor. Et quant ceo fuist faite la dite dame Alice pria le dit monsieur Alein qil vorroit dire as ditz countez la volonte du roi & les charger sur la benison de leur pierre de leur lesser & ouster des ditz tenemens & monsieur Alein respondist que ce ferroit il volenters si le roi lui comandast ceo faire & maintenant al instance de dite Alice le roi lui comanda densy faire.

Et quant al article de monsieur Nichol Dagworth il dist qil ne sciet rienz sinon qil oiaist la dite dame Alice dire plusieurs foitz q'nest pas reson ne ley que le dit monsieur Nichol que fuist enemy a monsieur William Windefore deust estre envioiez en Ireland pur faire inquisition de lui ou encontre lui.

Item William Strete nadgairs countrollour del hostel du dit roi & aiel jurrez en mesme la manere & diligement examinez dist qil estoit un jour a Havering quant William de York parlait au roi pur monsieur William de Windefore en presence de dame Alice Perrers pur destorber la passage monsieur Nichol Dagworth & la dite dame Alice disoit que ne fuist pas reson qun enemy ferroit juge dautre; Et outre le dit William Strete dist en sa consience que la dite dame Alice fuist principale promotrice de la dite besoigne a ceo qil creit.

Et quant al article de Richard Lyons il nent savoit rienz devant ceo que tout fuist esloite.

Item John Beverle jurrez en mesme le manere & diligement examinez dist qil noiaist vnqs la dite dame Alice parler au roi del un article ne del autre qar ele foi gardast bien de lui q'le ne parla rienz en sa presence; mais il cryet en sa consience qele fuist promotrice en la dit besoigne qar il ne conoist nul autre que purroit avoir pursue celle matere & puis ne sciet il dire de ceste matiere.

Et nyent meins feurent fait venir devant le dit duc & les ditz countes monsieur Roger Beauchamp monsieur Alein Buxhull monsieur John de Burle monsieur Richard Stury monsieur Phelip de la Vage monsieur Johan de Foxle & monsieur Tho-

mas Barre chivalers Nicholas Carren John Beauchamp de Halt John Beverle George Felbrugge John Salesbury William Strette Piers Cornewayle Thomas Londen & Helmyng Leget esquires del hostel de dit aiel; les queux feurent jurrez & chargez a dire la plaine verite sy la dite Alice fuist coupable de les articles avant ditz ou noun. Les queux diont sur leurs seremens que la dite Alice pur lower fuist principale promotrice a dit aiel en sa court a Flaveryng entour le feste de toutz seintz lan du regne du dit aiel cynquantisme del article touchant le revocation du dit monsieur Nichol Dagworth & par ele fait a dits escientz. Item quant al article touchant Richard Lyons ils sachtent bien que la dite Alice fuist bien voilante & a leurs escientz conseilante & eidante al dit besoigne devers le dit aiel a Shene en le mois de May darrein passe.

Et pur ceo que trouve est cele est coupable des articles contenuz en mesme l'empchement & les seigneurs du parlement que feurent au parlement quant la dite ordinance fuist fait recordont que leurs entencion fuist que mesme l'ordenance ferroit estatut & porteroit force du statut & les generals paroles *queconque la dite Alice purra foraine* se tendroient sy bien al forfaiture des terres & tene-menz come biens & chateaulx & toutes autres possessions considerz les damages & vilenyes per ele faitz au roi & au roialme par quele cause la dite ordinance ce fist en punissement de restreindre & punyr la dite Alice solement. Per qui est agarde en ceste present parlement que la dite ordinance tener force & effect solonc lenteute avantdite & cele soit bannyz hors du roialme & ses terres & chateaulx tene-menz & ses possessions sy bien en demene come en reversion soient forfaitz au roi & seisez en sa mayn. Et est lentencion du roi & des seigneurs & ore ordeignez & assentuz en mesme le parlement que toutes les terres des queux autres sont enseffez purchaces a son oepe & des queux ele prist les proistes ou tist la bargain a son profit demene soient forfaitz a cause de la fraude & disseite que poert estre presuene de ceo gele estoit puis enbande par celle cause de mesfaire soient forfaitz au roi & seisez come les autres. Et nest pas lentencion du roi ne des seigneurs que ceste ordinance ne agarde faitz pur sy odiose chose en ce cas especial setendant a nulle autre persone ne en nul autre cas soient pris en ensample.

Item ordeine est & assentuz que nyent contrestante la dite forfaiture il ele purchasa ascuns terres ou possessions par force ou dureste soyt y par fyn ou par fait en paais ou fait cnrollez ou autrement que ce purchase soit tenez pur null & eient les parties que se sentent grevez lur recovrir par procees en la chancellerie & par avis des grandes du conseil soit droit fait as parties & restitution fait solonc ce que le cas demande issint que les purchases faitz en bone foy ne soient pas annitiz ou adnullez par aucune voie.

Et istum rotulum sic factum & scriptum tradidit & liberavit Edwardus Brudenell clericus de corona &c. ad hoc in parlamento assignat. clerico parlamenti.

Part. 7. Richard. II. Pole. Cavendish.

Item fait assavoir que le xxiii jour de May lan present un Johan Cavendish de Londres peisoner soi pleignist en ce parlement primerement devant la commune d'Engleterre en lour assemblee en presence dascuns prelatz & seigneurs temporelx illoecs lors estantz & puis apres devant toutz les prelates & seigneurs estantz en ce parlement. Au comencement de quel sa pteinte il priaist as ditz seigneurs que pur Dieu ils lui fuissent surce & hastin pur noiaime pur salverte de sa vie & qil eust suffisante suretee de paix de ceux des queux il ferroit sa pteinte & par especial il demandast suretee de la paix de monsieur Michel de la Pole chancelier d'Engleterre & celle requeste a lui fuist grantez. Et sur ce par comandement des seigneurs avant ditz le dit monsieur Michel illoecs present y trovast meinprise pur lui & pur tous les soens de bone paix porter envers le dit Johan cest assavoir le count de Stafford & le count de Salesbris. Et ce fait le dit Johan reherceast comment au darrein parlement il avoit fait poursuite par une la bille envers Gyboun Manfeld Robert de Paris Johan Hankin & William Horfeman pur avoir restitution des certains biens & merchandises de grant vallue perduz sur la meer en defeute des ditz Giboun Robert Johan & William au temps quant avoient empris la save garde de la meer & des merchandises passantz & venantz en le moien temps encontre tous enemys horpris poair roiall quelle sa bille estoit endollez en dit parlement il dist & comys a la chancellerie pur discuter & terminer la matire y comprise selonc ley & reson. Et dist oultre la dit Johan que de sa dite besoigne il avoit parlance & trectee avec un clerc & familier de dit chancelier qad a noun Johan Otere & par especial de se coment sembloit au dit Johan Otere que le dit peisoner purroit mieltz avenir davor bone seignourie & aide en son cas de mesme le chancelier en qi meins lesplot de sa dite busoigne gisoit haut & baas luy quel clerc demandast copies de ses billes & de mesme la busoigne entier les quelles il lui delivraist & celles veues & entendues il lui permist que pur xl livres al oepe de son dit seigneur quatre livres a son oepe propre ent ferroit in bien & graciosument aides de son dit seigneur & de lui sanz nulle disceultee & sur celle promesse le dit Johan Cavendish saccordast bien & grantest de lui paier les dices xliiii livres en manere que lui les demandest. Mais pur tant il dist qil navoit mye alors la sone present en main de paier il se obligeroit volentiers par ses lettres al payement faire bien & loialment a certain jour & cinsi fuist fait. Et puis apres le dit peisoner ce dit il baillast au dit clerc certaine quantitee de harang sturgeon & dautre peison de la vallue de ix ou x marcz al hostel & oepe de chancelor avant dit en partie de payement des les xl livres avandies & trois verges de drap de scarlett que luy costa entour xxxii shill. il delivraist al dit clerc en pris de deux marcz en partie de payement de les qua-

tre livres a lui promise. Et dist oultre le dit Cavendish que combien quil avoit tant fait & promys al oepz del une persone & del autre toutes voiez il ne trovast gairs longement aide favour ne focour en effect en la persone del dit chancelier en sa dite querelle cinz il fust par le dit chancelier delaiex & encores est & justice ne ent purroit il avoir devant lui combien que as grantz travailz & coustages il ent avoit fait sa poursuite devers lui continuellement de jour en autre & de terme en terme. Affirmant oultre par ses paroles quil ent avoit le greindre suspicion del mal & pur quoi einz fait fait pur tant que le dit Johan Otere lui avoit countez a diverses foitz quil poiait avoir rescue greindre somme de mesmes ses adversairs pur avoir este avec eux encontre le dit Johan Cavendish quil navoit dyceill Jolian & auxint pur tant il dist que bien pres as toutes les foitz quil venoit al hostel del dit chancelier pur parler avec lui de sa matiere il trovast illoqs ses adversairs devant lui ou il les encontroit en venontz de mesure le chancelier. Mais si le dit chancelier doit estre reputez pur consistant de cest affaire entenduz queconque il ad ore contez il dit ou nemye Dieu le sciet mais le juges vous messeignors. Mais il dist que voirs est que a certain jour passez le dit chancelier lui fist faire paier pur son dit peison & avec ce fist debriser la dite obligation. Mais si ce fist il pur loialtee & conscience ou autrement pur eschuir esclandre & reproche en la cas il ne sciet ore dire mais le jugez vous messeignors. Et il dist oultre pur certaine que pur les trois alnes de scarlett ne fust il mye encores paiez.

Et sur ce le dit chancelier primerement devant les prelates & seignours en parlement & secondment devant les seignours & communes respondist & dist que de celle affair & de toute celle matiere il est innocent en cheacun degre.

Et primerement quant a ce que luy est surmys par laccusacion ore dite que le dit peisoner ad este tout dys delaiex & encores est par le dit chancelier & que droit & justice ne lui est fait en sa dite querelle ce ne contient veritee. Et ce vouche le dit chancelier a record toutz les justices & fargeantz de la roialme qont este presentz en la chancellarie movent sovent quant la matiere ad este pledez perentre les parties en quel'e querelle est pledez tang; a luisse dont partie gist en jugement & partie cemeint en travers issint que riens ne remeint affaire ore forsq; le jugement rendre de ce que remeint en jugement & trier ce qest traversez les queux jugement & travers ont este mys aucunement en delaiex pur difficultee & pur nule autre cause par ont il nest mye veritee ce dit le chancelier que le peisoner ad ore dit quil nent poct avoir justice & quil est malement delayez.

Et quant al remement del accusation ore faite le dit chancelier jurast par le sacrement de Jesu Christ quil est oultrement innocent & sanz coulpe & puis nent vient unqs a ce consiance forsq; en manere quil dirra qest tiel. Il dist que nouvellement il avoit parlanee avec les officers de sa maison pur savoir lestat dicell & pur ordener paiement as ceulx as queux

pur les despenses de son dit hostell il estoit detour & al ours primerement & nonpas devant aucuns diceux officers lui conterent la manere comment vne tielle quantitee de harang & sturgeon qestoit portez a la dite maison nonpas par voie dachat ne de purvoiance einz en une autre covite manere estoit despensdez en mesme sa maison dont il se merveillaist pur cause quil navoit consiance del dit peisoner & avec ce alors luy conterent mesmes ses officers comment une tielle obligation estoit auxint faite par le dit peisoner gavoit une querelle pendant devant lui & tantost celle matiere a luy descloise & par lui entendue il estoit meult grevousment ennueiz & corutez & jurast a ses ditz officers quil nemangeroit none beveroit deinz mesme son hostell tanque le dit peisoner feust per paiez de queconque il avoit fait envoyer ou livre de deinz son hostell avantdit & tang; mesme l'obligacion feust derompuz oultrement & defait & sur ce si estoit tantost le dit peisoner de son comandement fait venir en presence del dit chancelier en la chapelle deinz son hostell ouil demoeit au present quant il est a Londres en la quelle chapelle ou le corps nostre seignour Jesu Christ sacrez remeint continuellement il jurast par mesme le sacrement en presence de son dit clerc & del dit peisoner combien quil nestoit mye tenuz del faire que son dit clerc navoit unques touchez a lui de la matiere devant contez neutrement en avoit il consiance en privee ne en appert sinoun que par relation de ses autres officers en manere avant dite & quil nestoit unques perenar al dit covenant en fait nen parlanee en aucun manere & sur ce il fist tantost le dit clerc depreiser mesme l'obligacion & fist auxint le dit peisoner estre paiez pur son peison avant dit.

Et le dit chancelier par jurast devant les seignours par le sacrement de Jesu Christ que sa excusacion ore donnee si contient plein veritee & encores il est present del prover en quelconq; manere que plise a nostre seignour le roi & as nobles seignours du roialme presentz de faire ordener; & priaist le dit chancelier as seignours avantditz que aviant due consideration al estat quil portez deinz le roialme parmy son dite office de chancelier que lour pleust de lui ordener de due remede & justice de mesme le peisoner sur le defame & grevoule esclandre quil ad ore fait si fausement & si horriblement de sa persone en parlement qest le plus haute courte del roialme. A quoi le dit peisoner tantost illoqs respondist & dist quil ne avoit par sa dite plainte de rienz fait accuser mesme le chancelier einz seulement son clerc desluidit.

Et pur tant que le dit peisoner desfavorast en partie sa dite accusation & issint le deniaist par sa bouche quil nel avoit mye fait de la persone del dit chancelier einz de son dit clerc. Et auxint parmy ce que si bien le dit clerc come le dit peisoner sur ce examinez consturent que obligation avant dite si estoit fait al dit clerc soulement & en son noun faux nomer le persone del dit chancelier en ycelle; Et que mesme le clerc sur son serement fait en la cas si feisoit toutdys oultrement excuser son dit seignour.

seignour le chancelier qil nestoit unges con-
stant dicelle obligation ne del covenant avant
dit autrement que desuis nest dit. Et pur tant
auxint que les ditz Giboun Robert Johan &
William esteantz personelment en ce parle-
ment & examinez pur leurs ligeances depose-
rent expressement qils ne donnerent ungs riens
nene promistrent donn ne reward au dit chan-
celler en prive ne en appert par eux ne par
autre persone del monde les seigneurs avanditz
tenoient la persone del dit chancelier pur ex-
cusez de queconque estoit compris en lacculation
avant dite.

Et sur ce le dit chancelier priaist dereschief
as seigneurs illoques que combien que le dit
personer lui avoit inliant par sa dite desavouerie
en partie excusez toutes voies pur tant que
purroit apparoir clerement a chescune discrete
persone qi oiait la dite accusation que lente-
ment des paroles quelles le dit personer avoit dit
sonerent expressement en moelt horrible es-
claundre de sa persone que mesme le personer
feusse mis en arest tanq; il auroit treuvez suffi-
sante meinprise dattendre ce que sera jugez
sur ceste matire & especialment sur le faux
esclandre avandite. La quelle requeste estoit
otroiez & avec ce comandez par les seigneurs
que si bien le dit personer come le dit clerc
feussent mys en arest & ainsi fust fait. Et puis
apres si estoient ils lesez aler a large cest assa-
voir le dit personer par la mainprise de Thomas
Spicer & Esteven Skinner qi estoient obligez
corps pur corps davoit ledit personer de jour en
autre devant les seigneurs avant ditz ou devant
quelconqs autres juges qi a ce seront assignez.
Et puis apres pur tant que le parlement si feust
a cel soit bien pres sur le syn & les seigneurs
furent auxint grantement occupez illoques
entour les autres grosses buisoignes del roialme
si estoit en ce parlement la dite querelle avec
toutes choses dependentes & incidentes comys
as justices nostre seignour le roi pur oier &
terminer ycelle finalment si bien pur le roi
nostre seignour come pur les parties selonc le
roi auxi avant come les seigneurs de parlement
eussent peu fait si la querelle eust este treftez
pluis avant en leur presence & en mesme par-
lement.

In Scheda.

Record. fact. apud Westmminsterium per
Justiciar. &c.

ET postea die Martis proximi post Octab. Ste
Trin. viz. 14 die Junii anno regni domini
regis Ric. II. post conquestum 7. Robertus Tre-
silian capitalis justiciar. in banco ipsius regis,
Robertus Belknap capitalis justiciar. in commu-
ni banco & Roger. Fulthrop unus justiciar. in
communi banco vigore commissionis parlamen-
ti dicti domini regis apud novum Sarum ultimo
tent. fact. & autoritate ejusdem commissionis
unde in rotulo parliamenti predicti. mentio facta
est specialis contra quendam Johannem Caven-
disb de London sifmonger qui in parlamento
predicto primo viz. coram communitate regni
Angl. congregat. & postmodum alia vice coram

magistratus ejusdem regni in eodem parlamento
de Michaeli de la Poole milite cancellario dicti
regni & Johanne Ottere clerico ipsius cancellarii
de diversis mispronisibus sibi per eisdem factis
ut asseruit graviter querelavit & ipsum can-
cellarium per hoc multipliciter accusavit & de-
famavit processerunt in hunc modum.

In primis viz. ipsum Johann. Cavendish cor-
am eisdem justiciariis apud Westmynst. dicto 14
die Junii assidentibus sibi tunc ibid. Hugone
Segrave milite thesaurario Angl. magistro Wal-
tero de Scirlaw custode privati sigilli Johanne
Waltbam custode rotulorum cancellarie nec
non Waltero Clopton Willielmo Ricbill & Jo-
hanne de Lockton servient. ipsius regis venire
fecerunt qui ibidem comparens & de accusa-
tione sua predicti. & fact. & in rotulo parla-
menti predicti plenius irrotulavit. cujus materia
una cum responsionibus per dominum cancell-
arium in eodem parlamento adhuc in excusa-
tionem suam datis prout continetur in rotulo
predicti. pro majore parte recitat' coram ipso
Johanne de Cavendish tunc ibidem allocat. fuit
per justiciariis predicti & super hoc quatuor
fuit ab eodem si quid haberet pro se vel ulterius
dicere sciret quare ipse penam in statuto
contra hujusmodi defamatores edito subire non
debeat maxime cum idem cancellarius feo in
parlamento illo excusavit & omni alio modo
possibili se inde excusare est paratus. Qui quid-
em Job. ad hoc respondere & dixit quod
ipse nunquam personam dicti cancellarii in par-
liamento illo defamavit nec aliquid finistrum sive
inhonestum de persona ipsius cancellarii clam
vel palam in parlamento illo dixit vel alias
affirmavit quovis modo. Sed dicit quod quic-
quid per eum in hac parte fuerit hoc solum
de prefato Job. Ottere clerico ipsius cancellarii
in ista materia factum & sententia verborum
suorum ac modo & forma eorundem nec non
responsionibus & excusationibus ipsius cancell-
arii & aliorum ex parte sua hinc inde factis &
dictis ibidem debite ponderatis. Et ulterius
habend. respondit ad hoc quod ubi prefatus
Job. Cavendish dixit quod justiciariis coram dicto
domino cancellario in causa sua non potuit ha-
bere contrarium expresse habetur de recordo
in cancellar. predicti. prout alias predicti cancellarius
allegavit in eodem parlamento. clare constare
debet cuicunque discreto & intelligenti
quod idem Job. Cavendish per accusationem
suam predictam. ipsum cancellar' in eodem par-
liamento. false defamavit. Per quod consideratum
est quod prefatus Job. Cavendish super defama-
tione illa convincatur & idem cancellar' recup-
eret versus eum damna sua. Et quod Job.
Cavendish predicti committitur prisoni domini
regis ibid. moratur. quousque tam prefato
cancellario de damnis suis predictis quam dicto
domino regi pro fine competenti sibi inde debito
plene satisfecerit.

Parl. 10 Ric. II.

En y cest parlemen touz les communes
dun accord & unement assemblez vien-
drent devant le roi prelatz & seigneurs en la
chambre de parlement compleignantz greivement
de Michael de la Pole count de Suffolk darrein
chancelier

Dengleterre lours esteant present & lui accuse-
runt par demonstrance de bouche en manere en-
suant; cest assavoir.

Article 1. Primement que le dit count
esteant chancelier & jurrez de faire le profit
du roi purchasa de nostre seigneur le roi terres
tenementz & rents a grant value come piert par
record & rolls de la chancellerie encontre son
serement la ou il ne lavoit tant deservi conside-
rez la grant necessite du roi & du roialme. Et
entre le a cause que le dit count feust chancel-
ler au temps dudit purchas faite les ditz terres
& tenementz feurent extendus a maindre value
qils ne vaillent par an par grante some en de-
ceite du roi.

2. Item la ou IX seigneurs feurent assignez
au derrein parlement pur veer & examiner le-
stat du roi & du roialme & dire leur avis com-
ment il purra meuz estre amendez & mys en
meliour governance & disposition & sur ce
lexaminement fait & le report sur ce fait au roy
sibien par bouche come en escript le dit nad-
gairs chancelier disoit en plein parlement que
les ditz avdilement & ordinance deussent estre
mys en due execution & ce ne feust faite &
en default lui qalors feust principal officer.

3. Item la ou la charge feust grantez per les
communes au derrein parlement per estre des-
penduz en certain forme demande par les com-
munes & assentuz par le roi & les seigneurs &
nouns pas autrement les deniers ent prove-
nantz feurent despenduz en autre manere si que
la meer neustoit gardez en manere come feust
ordinez peront plusieurs melchiefs sont avenuz
au roialme & vray semblable est devenir &
ce en default dudit nadgairs chancelier.

4. Item par la ou un Tydeman de Linbergh
qavoit a lui & ses heires de don le roi laiel L
livres per an de la customes de Kingston sur
Hull le qele Tydeman forsist devers le roi &
auxint le paiement des ditz L livres annuelles
discontinue par XX ou XXX ans le dit nad-
gairs chancelier se sachant purchasa a lui & ses
heirs du dit Tydeman les ditz L livres annuel-
les & fist tant que le roi lui conferme la dite
purchasa la ou le roi deust avoir ove le profit.

5. Item par la ou le haut mestre de saint An-
toigne est sismatick, & par celle cause le roi deust
avoir le profit que a lui appartenoit en le roialme
Dengleterre le dit nadgairs chancelier que deust
avoir avancez & procurez le profit du roi prist a
ferme le dit profit du roi pur XX marcz pur
an & ent pris a son oeps par propre bien entour
mille marcz. Et al heure que la mestre de seint
Antoigne en Engleterre qore est deust avoir pos-
session & livre dudit profit il ne la poast avoir
avant qil & deux personnes oveq; lui favoient
obligez par recognissance en la chancellerie &
par instrumentz en trois mille livres de paier
annuellement a dit nadgairs chancelier & a Johan
son fitz C livres per an a terme de leur deux
vies.

6. Item qen le temps du dit nadgairs chan-
celler feurent grantez & faitz diverses chartres
es patentees des mures tresons felonies
rasures des roules vente des lois & en especial

puis le comencement de cest parlement feust
faite & enseale une chartre de certains franchi-
ses grantez au chastell de Dovort en delherite son
de la corone & subversion des toutes les places
& courts du roi & des ses lois.

7. Item par la ou ordinance feust faite au der-
rein parlement pur le ville de Cant que dys
mille marcz deussent estre cheviz & pur celle
chevance deussent estre perduz III mille marcz
le en default & negligence dudit nadgairs chan-
celler la dite ville feust perduz & nientmayns
les X mille marcz paieez & les ditz III mille
marcz pur le chevance perduz come dessus est
dit. De toutz les quex articles les dites com-
munes demandent jugement du parlement.

A quoi le dit count fist ses respous en mane-
re qensuit.

Primement le dit count disoit as seigneurs
du parlement coment il estoit chancelier Deng-
leterre & pur le temps representa la persone
du roi en sa absence & demanda s'il devoit
responde sanz presence du roi depuis qil feust
empesche des faitz en temps qil estoit chan-
celler.

Secondement le dit count avoit ordeine par
l'avyz de son conseil que monsieur Richard Le-
scrop son frere en loi averoit les paroles de se
response des ditz empeschementz. A quele
chose les seigneurs disoient que feust honest
pur lui de respondre par sa bouche demesme. Et
surce il fesoit protestation qil purroit adder ou
diminuer a ce response ce que a lui purroit
estre honorable & profitable par avys de son
conseil. Le quele chose lui estoit grante.

Et quant al primer article de son empesche-
ment cest assavoir depuis qil estoit chancelier
qil deust purchacer certains terres du roi &c. La
dit count respondoit que depuis qil feust chan-
celler il ne purchasa unques nulles terres ne
tenementz du roi ne le roi lui dona ne a nully
de soens nulles terres ne tenementz tanq; au
temps que le roi lui fist prendre lestat du count
mes par voie de verroie eschange. Cest assa-
voir que come le dit count avoit CCCC marcz
annuels sur la custume de Kingston sur Hull par
descent de heritage pur queux il pluist au roi dis-
signer au dit count terres & tenementz a la
value & assigna & dona partie devant qils feust
chancelier & partie depuis & ce au profit
du roi sibien annuellement come par cause dune
summe de mille marcz paie au roi par la dit
count pur celle cause. Et oultre dist que le
roi a son primer viage en Escoce il lui plaist de-
faire duks banneretz & chivalers al honour de
lui & de son roialme il pleust a lui sanz de-
sire ou covetise dudit count de sa propre motion
de lui faire count & lui comanda de prendre
lestat & noun de count de Suffolk en lieu de
celui que nadgairs morust & apres ceo noma
la quantite de ceo qil averoit pur maintenir
celle estat. Et outre ceo disoit qil voilloit as-
signer mesme la quantite de les terres que es-
sient au dit count de Suffolk que derrein morust.
Et pur ce que la dit count disoit au roi que
madame la reignece & la dame de Suffolk avoi-

ent toutz celles terres a terme de leur vies en leur meyns nostre dit seigneur le roi disoit q'il ordeignerait allours pur lui a la vallue tanq; meisme les tertes lui feurent descenduz. Et quant a la desert &c. le dit count respondut que anomer la desert ne gist en la propre bouche honouablement a dire mes une chose dist il que tanqe persone que ce soit que prent aucune charge sur lui tantost ad il deservi ce appartient a meisme sa charge. Et outre dist q'il avoit este pris deux soitz de guerre & un soitz en Alemanyne quant il estoit messager pur la mariage du roi & avoit a meisme le temps tant de damage & peril en son corps & perde de ses biens q'il ne vorroit pur atantz des terres avoir tieux meschiefs sil nequidoit meulx echapper q'il ne devoit a meisme le temps autres choses il ne voet nomer meismes mes si pleust au roi aucuns choses recorder bien soit &c. Mes le dit monsieur Richard Lecrop disoit pur le dit count que le dit count avoit travaille a baner per XXX ans & plus sanz deshonour ou reproeve loiez soit Dieux & ad este capytain de Caleys & admiral & envoie en diverses soitz en message & trectes du roi & auxint este chancelier Dangleterre par grand temps & du conseil du roy & ne feust mye treit de petit estat a cest honour du count mes endowez honouablement & sufficacement pur lestat q'est plus pres lestat du count. Les quelles choses purront estre causes de desert oveq; meismes les causes que la dit count ad nome devant pur lui mettre a tiel estat & honour. Et quant as empeschements de les extentes que feurent faitz en deccit du roy &c. le dit count respount q'il pria au roi q'il lui plerra assigner aucuns en queux il faffoit de veer que le dirz extentes serroient resonablement faitz. Et le roi disoit que ce ne serroit mye honouable pur le dit count de faire nouvelles extentes du temps q'il estoit chancelier qar serroit suspeciosus que cause de celle office les extenz serroient faitz plus favourablement mes la voluntee du roi feust que la dit count prendroit les extentes que feurent faitz devant le temps q'il pensoit de lui faire count ou que le dit count qui doit davor meismes les terres & de ce nully purroit parler mal. Et pur ce le dit count dist que nulles extentes des ditz terres feurent faitz au temps q'il estoit fait chancelier mes qils ad pris a plus hautes extentes & que sont plus profitables au roi. Et outre ce le dit count dist que son dit estat du count oveq; ce que le roi lui dona pur meisme lestat meyntenir feust conforme en plein parlement & sur ce feoit son homage pur la dit estat chargez de bouche de monsieur Delpargne & duc de Lancastre & sur ce le roi lui dona les patententes ent faitz en ses maynes propres en noun de possession comandent le clerck du parlement de les mettre en la rolle du parlement & ont enrollez.

Item quant al second article voir est que les IX seigneurs assignes firent report de leur avys au roi & le dit count par commandement de roi disoit que la voluntee du roi estoit que serroit mys en execution quelle chose les officiers

& autres du conseil le roi & lui firent en partie come a Chirburgh & Brest cellasavoir annuellement au profit du roi v M marcz & plus & il fist la diligence come il poait que tout le dit avys deust avoir este mys en execution tanq; come en luy feust. Et pur ce que les aches & l'execution des ditz points touchent les faitz dautres officiers & auxint en aucun manere autres du conseil du roi le dit count respount q'il est avyse que autres officiers joindrent a lui en cest respons & en cas que eux ou nul autre lui verra assigner defaut en especial il fa executera si Dieu plest.

Et en meisme la manere, il respont a la tierce article & a la derrein.

Item quant al quart article il dist que la dit Tydeman avoit L livres annuels sur l'ancienne custome de Kingstone sur Hull a lui & ses heires enheritablement a toutz jours du grant le roi E. aieil le roi qore est feust paie de ycell long temps come piert per l'accompt des custumers de Kingstone sur Hull en leschequer nostre seigneur le roi. Quel Tydeman pur mille marcz queux il devoit au dit count lui granta par son fait long temps passe en la temps le roi E. aieil les L livres avantditz avoir & prendre audit count & ces heires a toutz jours. Et per cause que le dit count fist restitution del patent du dit Tydeman & le roi deschargez des arrearages le roi lui fist pardon de meisme le purchafe sanz ce que le dit count lors coust & uncore fait aucune forsiteure ou detre envers le roi du dit Tydeman.

Item quant a la quint article le dit count devant q'il feust chancelier pria au roi de donner a Johan son fitz hospital en la procuracie de seint Antoine en Engleterre & le roi lui granta franchement sanz rien rendre ou autre condition & lui fist un garrant au privie seale. Sur qoi le gardein du privie seale pur ce q'il y avoit une eglise approprie a meisme hospital ou procuracie ne verroit faire garrant du grant sanz une certaine ferme rendre au roi & a cause de paiement de y cell il fist la garrant as ditz count & Johan rendant vint marcz per an durrant la guerre. A quele temps le dit count ne savoit null vallue del dit hospital ou procuracie & a plus tost q'il favoit il monstra au roi q'il feust de la vallue de quatre cent marcz per an & le roi disoit q'il lui plerroit bien q'il faveroit tout soit il de greindre vallue. Et le dit count disoit au roi que la dit rent ne feust mye del possession de temporele ne spirituele mes des coillet de pardon & q'il ne voillent mye prendre le profit a son oeps mes emploier en almoigne sil pleust au roi quele chose il ad faite par assent du roi &c. Et si appert overtement que le roi ne feust desceu depuis que la vallue lui feust clerement monstrez & mys par assent du roi en almoigne sanz profit temporel du dit count. Et outre il fist protestation q'il nest pas tenuz de respondre a la partie par ceste empelchement. Nientmoins pur declaration de son estat il dist que a cause que la benefice feust spirituell el envoia al pape pur avoir ent collacion a son dit fitz quell le pape

pape lui attroia issint que son dit fitz sceusse profes-
le en lordre deinz certain temps & pur ce que
pur certains causes son dit fitz ne poiat estre pro-
fesse deinz le dit temps il remanda a la dite court
pur avoir ent dispenfacion & ceste chose issint
pendant en delay vient le mestre qore est ove
les bulles del apostoil de mefine la chose &
par la issint & treita ove la dit ore count qil
cesseroit de seure plus avant vers la dite court
pur son dit fitz & issint de son bon gree per
celle encheson grante de rendre annuelment al
dit count & son dit fitz les centz livres con-
tenuz en la dite article.

Item quant al sisme article en quele est especifie
dune chartre grante a Dovorr il dist que garrant
lui vient de la faire & pur ce que ce feust le
chastell & al profit le roi sanz male entent du
dit count elle passa le seale legerement sanz
grande avys nient entendant lors que feust en-
contre les loies. Et si aucun vorrot avoir declare
ou enforme le dit counte que ce eust este prejudi-
ciall au roi en ses cors il neust point este enfeale
& tout feust elle enfeable il la voilloit avoier re-
pelle & dont nulle damage nest unqore aveniz
&c. Et quant as autres chartes especifies en
mefine l'article il les fist per garrant sanz male
entencion ou covyne de luy en null point. Et
outre il prie que nulle novellerie soit mys sur
luy autrement que nad este avant ces heurs sur
tieux officers entendant que si chancellor face
patente encontre reson ou juge rendre juge-
gement encontre la loi que tiel patente ferra re-
pelle et tiel jugement reverez sanz autre
puissanceffaire a tiel officer ou juge.

Et les communes repliantz al response du dit
count del primer article monstrerent as seignours
la copie de son serement fait quant il sceust creez
chancellor en manere qensuit: *Vous jurrez
que bien & loialement servirez a nostre seigneur
le roi & a son poeple en loifice de chancellor &
droit ferrez as toutes gentz poves & riches se-
lonc les loies & usages du roialme. Et loialement
conseillerez le roy & son conseil celerrez. Et
que vous ne savorrez ne sufferez le damage dishe-
riteson le roy ne que les droitures de la corone
soient destruz per nulle voie si avant come vous
le poez disturber & si vous ne poez destrourber
vous le ferrez savoir clerement & expressement
au roi ensemblement ove vostre loial avys &
conseil. Et que vous ferrez & purchaferrez le
profit le roi pur tout ou vous le purrez faire ra-
sonablement. Si Dieu vous aide & les seints evan-
geliels.* Priantz que ce lieu & bien entendu & consi-
deres les circonstances de son dit respons siben cest
assavoir de ce que nad pas dedit qil ne rescueit du
don le roi puis qil estoit fait count esteant en loifice
ce du chancellor diverses terres & tenementz co-
me contenuz est en lempechement come qil ad co-
niz overtment qil rescueit du roi autres terres &
tenementz que sont certains & seures a la value
de quatre centz marcz per an en echchange de
quatre centz marcz annuels quels il avoit sur la
custome de Kingstone sur Hull que sont casuels
& nemye si seures nient enformant le roi clere-
ment de son damage celle partie, & coment qil
ad dit qil rescueit partie des ditz terres & tene-
mentz issint pris en echchange devant qil estoit

chancellor les communes dient qil estoit lors
du privie conseil du roi & ace jurrez & puis en
la creation del office du chancellor alstir de
novell par serement & en cell office agreant as
echchanges per lui devant suppliez prist & rescueit
du roi le remenant des ditz terres & tenementz
en pleine per fournissement des echchanges suifditz
& demandont jugement du parliement sur tout
son respons defusdit.

Et al response del second article les commu-
nes repliantz disoient que depuis qil consult en
sa primere protestation qil representa lestar du
roi tancome il estoit en tiel office & issint lesten-
dy son poiar sur toutz les autres per
qoi coment que defaut estoit en les auters
il ne poast per tant estre excusez & per especial
ce que le roi lui comanda a dire en parlement
come il ad dit il estoit le plus tenuz de mettre
la chose en execution & descome il ne dist
point que les damages ne sont avenuz come ils
surmettent ils priont jugement de parlement.

Et al respons del quart article les communes
repliantz disoient qil ferra trove de record en
lelchequer lavant dit Tydeman estre dettour au
roi en grandz sones come ils supposent & cell
cause appartient au roi le dit rent tout neust il
autrement forfais & issint fuist le roi defaut &
prient que les records soient examinez. Et dient
outre que un Neel Hakeney fuist occis par sa
feme & sa servent & le dit Tydeman pur quele
selonie les ditz feme & servent furent ars & le
dit Tydeman sensuy.

Et al respons del quint article les communes
repliantz purposantz ensamplez dun William
de Thorpe nadgairs cheife justice du bank le roi
que mort est surmettrantz qil prist xx livres dune
partie qavoit affaire en plee devant lui &
pertant vedy la loi pur quelle cause il estoit a-
jugge a la mort & forsaiture de ses terres &
chaucux. Et disoient qen ce que le dit count
esteant issint chancellor prist le ditz. centz livres
du dit proviseur devant qil fist le livre al dit
proviseur hors des mayns du roi des ditz. pro-
fitez quele livre il deust avoir fait selonc le co-
mandement du roi franchiseement sanz riens prendre
lorsemble qil vendy la loy & prirent juge-
ment.

Et al respons del sisme article les communes
repliantz disoient qil apertenoit a lui si sage come
il est destre bien mys & bien conseil que
nassenteroit ne seroit tiele chose que cherroit
en desherison du roi & oppression de son poeple
descome il poast avoir en suffisante de conseil
des justices & des autres a sa volonte & prient
jugement de parlement.

Et sur ce le dit count repliant a la replication
des communes touchant son serement disoit
que prendre les paroles du dit serement general-
ment sanz autre especial entendement null chan-
celler ensealerait james nulles choses de don
ou grant du roi a nulle persone des terres & te-
nementz ou autre biens sans offense de son se-
rement. Mes que la dit count dist que nest pas
compris en ladi serement ne defenduz a lui de
prendre a luy mesmes de donne du roi nient
plus qe nul autre person.

Et

Et depuis que les dons donez as autres personnes en le dit voyage des diverses estats ne as autres devant ne sent empeschez ne tenus encontre le serement du chancellor il semble a lui que ne plus il doit estre empeschez pur donns donez a lui pur son estat depuis qen le dit serement nest defenduz ne restraint a lui plus qas autres & plus especialment pur ce que le dit estat & les donz donez sont confirmez per plein parlement. Et outre dist qil accepta le serement du chancellor alentent qil le tondroit solonc son sen fa conscience & poair. Et pur les causes devant exprefcez il dist que devant Dieu respondre qil ne pense rien avoir fait en les choses suisditz encontre son serement & fa conscience. Et nentende mye si le chancellor enseallent donns du roi as seignours pur leur estat menteyner ou pur autre cause resonable per gorant du roi que lui vient dist encontre son serement &c. Et dist que ce qest compris en le serement qil ne souffrira damage ne disheritefon du roi &c. ce est a entendre a ce qil entende des matiers dont le roi nad conifiance & ce appiert per la cause compris en le serement qil ferra savoir au roi clerement & expressement & apres que le roi est enforme en tiel manere le chancellor purra faire le comandement du roi sanz offence du dit serement. Et dist que de son estat & de ce que le roi luy dona fust expressement fait per le comandement conifiance & volonte du roi & insint nient encontre son serement & nentendre mye que de celle matire ne doit estre empesche.

Item quant a ce que les communes disoient que le dit count avoit deceu le roi a cause qil avoit pris de roi le manoir de Feaxflete en vallue de L livres quel manoir vaut ce livres per an &c. Le dit count respondit que monf. William de Morrers lui disoit qil avoit ewe les deux parties du dit manoir ove le rent en Northdalton a ferme per vij an pur Lx marcz per an & qil avoit perdez de celle ferme en le dit temps C marcz. Et outre dist que le dit manoir ove les dis marcz de rent en Dalton tout ensemble sont estenduz come pier en la chancellarie forsque a xli. livres ix souldz iij deniers ob. Et pur ce que le dit count avoit entenduz que le count de Kent avoit les ditz deux parties du dit manoir ensemblement ove les ditz dyz marcz de rent suisditz en value de L marcz si que sont entiers le manoir fuit de vallue meime les L livres. Et oustre dist que le dit manoir ove les marcz suisditz ne vallent pluis a paine a tant & dist que queconque persone que voet sustenir les charges du dit manoir sufficalment & lui paier pur les deux parties L marcz per an & quant la tierce partie soit echue de lui a donques paier pur la dit manoir ove les x marcz de rent L livres per an qil le ferra de bone coer.

Item quant a lempeschement des communes de L livres de la penson del provifour de saint Antoyne & que le dit count deveroit vendre les lois & miferent en sample de monfieur William de Thorpe, &c. Le dit count respont que les cafes ne sont rien semblables qar les parties plederent devant le dit monf. William come devant leur juggle per les lois d'Engleterre en qele cas null juggle ne doit prendre de null partie de leur

faire droit. Mes en le cas du dit provifions nulles parties plederent devant le dit count come chancellor mes le dit provifour vient a luy ove bulles de nostre feint pier le pape & neimye come a chancellor na juggle en celle cas mes come pier & amy a Johan son fitz aquele heuire home ne savant si le dit Johan avoit esploite de la grace du pape ou nemye & auxint defautes feurent trevez par le counseil du dit count en les bulles du dit provifour & per meime la cause le dit provifour par les amys de sa bone gree profrist une en penson de Clivres pur lesser sa suite en la court de Rome pur son dit fitz & pur ce que neapcheroit ses bulles si que les choses suisditz ne feurent faitz come devant juggle mes par amiable composition come poer estre prove par instrument, & par tesmoigner en ceste ville. Et insint ceste motiere ne touche mye les loies Dengleterre & touz jours le dit count nentende mye qil ferra tenu de respondre a la partie en cest cause.

Et sur ce apres les respns du dit count dones as accusifonez des dites communes & les replicacions a y ceux faites dune partie & d'autre le dit count a la requeste des dites communes pur la grandesse des defautes a lui insint surmises estoit arellu par comandement du roi & comys en la garde de conestable Dengleterre & puis lessa a mainprife.

Juggement.

Et pur ce que le dit count nallegea point en son respns qil observe leffect de son serement en ce qil jurast qil ne faveroit ne ne souffreroit le damage ne la disheritefon du roi ne que les droitures de la corone fussent destrutz par nul voie si avant come il les poiait destourber & si ne les poiait destourber il le feroit savoir clerement & expressement au roi ensemblement ove son loial avys & conseil & qil feroit & purchaceroit le profit le roy par tout ou il le purroit faire resonablement & il tancome il estoit enly principall officer du roi sachant lestar & necessite du roi & du roialme prist du roi tielx terres & tenementz come est suppose par lempeschement a luy en le dit primer article surmys. Et coment qil allegea en son respns queles donns a luy insint faitz feurent confermez par pleine parlement il y a nul tiel record en roule de parlement. Per quoy agarde est que touz les manoirs terres tenementz rentz services fecs advowfons reversions & profitz ove leur appurtenances par lui insint receuz du roi soient reseifez & reprisez en les mains du roi avoir & tenir a nostre dit seigneur le roi & ses heirs si pleinement & enheritablement come il les avoit & trent le donnent fait al dit count. Et que touz les issues & profitz euz recevez ou euez al oeps du dit count en le meime temps soient levez al oeps nostre seigneur le roi des terres & chatelx du dit count illoegs & aillours. Mes nest pas l'entention du roi ne des seignours que celle juggement festende de lui faire perdre le non & le tittle de count ne les xx livres annuels queux le roy lui granta aprendre des issues du countee de Suffolk pur le noun & tittle avantditz. Et outre pur ce que le dit count nad pas dedit qil nestoit du prive conseil du roi & lui jurre qua ntildemanda primes du roy

la dit eſchange eſtre faite & ad conuz que devant les ditz eſchanges per fourmez il feust fait chancelier en quell office il feust aſſiſt par fon ſerement fait en la fourme avandite.

Et il eſteant iſſint & dit office priſt du roi partie des ditz quatre centz marcz de terre par reſon du dite eſchange agreant al dite covenant deſechange qil fiſt enſy devant qil feust chancelier & nallegea point en ſon dite reſpons que le roi feust diſtinctement enſourme de ſon damage celle partie ceſt aſſavoir en ce que le roi dona a luy manoirs terres & rents que ſont certeignes & ſeures & non poent vraisemblablement eſtre deſtrudz ne adnullez pur les avanditz quatre centz marcz annuels que ſont non certeins & levables & demandables des cuſtomes & enſi come caſuels & en divers cas que purroient aventureuſement eſchere; agarde eſt que touz les terres & tenementz iſſint priſes par le dit count pur les eſchanges ſuſditz ſoient reſprises en mayns noſtre ſeigneur le roi a tenir a lui & ſes heirs en manere come il leſtient d'avant le doun ent fait en le dit eſchange.

Et que les iſſues & profitz priſes & eues des terres tenementz & profitz ſuſditz puis le dites eſchanges remaignant al dit count en recompensation des dites quatre centz marcz annuelles queux il avoit enſi enheritablement de la cuſtome devant les eſchanges ſuſditz. Hors pris que ſi les ditz iſſues & profits iſſint priſes puis les dites eſchanges leſtendent a greindre vallee que les dites quatre centz marcz annuelles qadonges le roi eit celle ſurplus a lever des terres & chateaux du dit count illoegs & aillours.

Et quant al article contenant que le dit count deult avoir purchaſe cynkante livres de rent de Tydeman Lymborgh pur ce que le dit Tydeman avoit les avant ditz cynkant livres de rent per en aprendre tant ſoulement de la cuſtome al port de Hull & nemye aillours la quelle cuſtome appartient al corone noſtre ſeigneur le roi dauncien temps. Et le dit Tydeman eſtoit alien come bien eſt conuz ce tient hors du roialme d'Engleterre par trent ans & plus & deſconuz eſt ſil ſoit en vie on noun & neſt pas allegge que aſcun de ſa part le challengea de long temps. Et le dit Tydeman ne poaſt en nul manere tranſlater le dit rent en autre perſone par voie d'alienacion ſanz le bone volonte du roi pur ceo que leſtat qil avoit en le dit rent feust a lui & ſes heirs tantſoulement & non pas a ſes aſſignes come par la chartre du roi qil ent avoit & geſt de record pleinement appiert. Et le dit count ne monſtra pas que le dit rent feust purchaſe del dit Tydeman en Engleterre par quoy y ne poet eſtre conuz ſi la dire purchaſe fuiſt bone & legale on non. Et le dit count nallegea point en ſon reſpons qil quant il purchaſer pardon & confirmation du roy del purchaſe du dit rent monſtra pleinement au roi qil purroit avoir reteni le dit rent a ſon propre oeſps au meyns tanq; le dit Tydeman ou ſes heirs linealx neez deinz la ligeance & conuz euſſent demande la dite rent par qoi y ſemble par les ditz cauſes que le roi en le grant des

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ditz pardon & confirmation que demanderent par reſon grant fin & eſloient faitz ſanz tin ſi feust deſceuz.

Et auxint come le dit count priſt apres de don le roi lavandit manoir de Faxſſete & des marches de rent que feurent certains & ſeures en eſchange pur les ditz cynkant livres de rent que feurent caſuels pur ce que le dit port de Hull poet par poſſibilite eſtre adnulle par flotz de mare ou la paſſage de loyns illoegs deſturbe manta anienty & auxint par diverſes autres cauſes & enſy meſq; le dit count eust en bone & profite eſtate en le dit rent il nallegea point en ſon reſpons qil fiſt pleinement ſon devoir envers le roi en la price du manoir & des marches de rent ſuſditz en eſchange en la fourme avandite & enſy ſon dit reſpons eſt meyns ſuffisant de lui exeuer del default al lui ent ſurmis. Et pur ceo agarde eſt que ſi bien le dit manoir de Faxſſete & les dis marches de rent ſuſditz ove les appartenances ſoient reſprises en mayn du roy a tenir a lui & ſes heirs come il leſ tient devant le doun au dit count ent iſſint faite come le chartre de pardon & confirmation del purchaſe des ditz cynkantz livres enſi faitz au dit count ſoit repelle & autrement adnulle. Et que les avant ditz cynkant livres de rent ſoient retenez es meyns du roy & ſes heirs en fourme come ce eſteit avant la purchaſe que le dit count ſi diſt a lui eſtre en fait ſi aſcun y eust & que les iſſues & profitz reſceuz ou eues al oeſps du dit count ſi bien du dit manoir de Faxſſete & de les dis marches de rent come les iſſues & profitz des ditz cynkante livres de rent ſil aſcuns priſt par reſon del purchaſe avant dit ſoient levez al oeſps noſtre ſeigneur le roi des terres & chateaux du dit count illoegs & aillours.

Et quant al article contenant le profit de Saint Antoyne pur ce que le meſtre del meſon de Saint Antoyne a qi le dit profit provenant en Engleterre eſtoit due a ce geſt dit eſt ſyſmatick & auxint del ennute du roi & poair de France & pur tielle repoute a donq; & unqore eſt quoy tout le dit profit duist appartenir au roi ſicome de ſyſmatick & aliens quel choſe ne d'overoit de reſon avoir eſte diſconu audit count avant qil demandaſt du roi le dit profit & il conuſt expreſſement qil le demanda a ſon ſitz come un hoſpital & nallegea mye en ſon reſpons que le roi quant il lui granta le dit profit eſtoit enſormez duement des choſes ſuſditz. Et auxint en ce quant fuiſt tiel officer come devant eſt dit il envoia a la court de Rome pur meſine le profit avoir a ſon ſitz de la collation du pape come benefice de ſeint eglife & devoir enſi la dit profit hors du mayn du roi par collation del apoſtoil & il ne dedist point qil ne receuſt des ditz profitz quatre centz marcz au nient alleggeant qil les rendist au roi. Et come apres le dit count conuſt qil fiſt une bargainne ove le provifour que claima la dit profit du grant du pape danon du dit provifour cent livres per an a lui & Johan ſon ſitz a terme de lour deux vies pur delivrer le dit profit au dit provifour pur queux

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centz

centz livres ensi apaiars a lui & son ditz fitz il prist fuerde del proviseur par recognizance & obligations des diverses somes nient contrestant que le roi lui avoit comande par sa lettre de delivrer hors de ses meynes al dit proviseur tout le profit avant dit la ou y semble pur riens que uncore est monstre que tout le dit profit deult avoir demure en la mayn du roi pur les causes avantdites au meynes tanq; il eust este discusse ou le dit profit feust benefice de seint eglise grantable par la pape ou appartenant au roi par reson de sismacie & enemyte du dit mestre & il nallagea mye en son respons que le roi feust clerement enfourmez des choses suisditz. Par qoi agarde est que les avantditz quatre cent marcz per an du temps que le dit profit lui estoit ilint grante per le roi tanq; au temps qil delivra mesme le profit au dit proviseur come auxing les ditz centz livres anuels rescueu apres del dit proviseur tanq; en cea soient levez al oeps nostre seigneur le roi de ses terres & chatelx & que tout le profit que deult desore appartenir au dit count par reson du dit recognizance ou dautres obligations on covenantes ensy faitz en feurtie de la paiement des ditz centz livres remaignent al oeps nostre dit seigneur le roi come forfait & que le dit proviseur soit ent outrement descharge envers le dit count & son fitz. Et pur les defautez & mesprisons suisditz des queux le dit count est ensy convict pur non sufficancie de ses ditz respons agarde est qil soit comys a prisonne du roi a y demurrer a volonte du roi & qil ne soit delivere du dit prisonne avant qil eit fait fyn & ranceon a la volonte du roi. Et quant al mille marcz queux il ad allegge qil ad paie au roi pur les ditz eschanges agarde est que les ditz mille marcz remaignent en les meynes du roi come en partie du paiement del fyn & ranceon que le dit count ensy fera a roy avant qil soit delivere du prisonne.

Parl. 5. Hen. IV.

Item Vendredy le viii jour de Fevrier le count de Northumbre vient devant le roy & les seigneurs & communes en parlement & illoques le chancellor 'Engleterre luy monstra coment Mesquarday lors darrein pallez il avoit este devant le roi & les seigneurs & communes en mesme le parlement & illoques il avoit priez au roi come il avoit fait autrefoitz a son venue devant luy a Everwyk qil pleast a mesme nostre seigneur le roi de luy faire grace de ceo qilluy avoit mespris envers luy nient gardant les loies & estatutz come ligeance demande si come par une petition par luy baillie en parlement escript en Engleys puis le tenure sensuite y purra apparoir dunt le plein.

To my most dreadfull and sovereign liege lord.

I your humble liege beseech to yourre hynesse to have in remembrance my coming to yourre worshipfull presence into York of my free will be yourre grace goodly letters, where I put me in yourre grace, as I that night have kept yourre lawys & statuts as ligeance asketh, and specially of gederyng of

power, and gevyng of liveries, as that time I put me in yourre grace and yit de, ze seying and hit like to yourre highnesse that all graceless shold I nat goe. Wherefore I beseech you that yourre high grace be sene on me att this tyme, and of othir thyngs whiche ye have examined me of I have told you pleynly, and of all I put me holy in yourre grace.

Quele petition par comandement du roi examinez par les justices pur ent avoir leur conseil & avis celle partie par protestation fait par les ditz seigneurs que le jugement appartient a eux tantseulement. Et puis lue & entendue mesme la petition devant le roy & les ditz seigneurs mesmes les seigneurs come piers du parlement as queux tielx juggements appartient de droit eue sur ceo par comandement du roi deliberation competente & oiez auxi & entendu sibien les estatutz faitz lan vingt & quint du roi Edward aiel a nostre seigneur le roi qorest de declaration de trefcon come les estatutz des liveries faitz en temps mesmes nostre seigneur le roy qorest adjugeront que ceo que feust fait par le dit count come il est contenuz deinz la dite petition nelt pas trefcon ne felonie mes trespas tant seulement pur que le trespasse le dit count deult faire fyn & ranceon a la volonte du roi. Sur quoy le dit count most humblement remercia nostre seigneur le roi & les ditz seigneurs ses piers de parlement de leur droitreulx jugement & les ditz communes de leur bons coers & diligence faitz & monstrez celle partie. Et pria outre mesme le counta nostre dit seigneur le roi que affermande de cestes matires pur oustre toutz averouistes & malvoises suspicions il purra estre jurrez de novell en presence du roy & des seigneurs & communes en parlement. Sur quoy en mesme le parlement le dit count fist serement sur la croice de Canterbers destre foial & loial liege a nostre dit seigneur le roi & a son eisme fitz monsieur le prince & a les heires ilstantz de son corps & a mes seigneurs ses freres & leur isue successivement & enheritablement a la corone solonc les loies d'Engleterre. Et puis apres mesme nostre seigneur le roy eiant en memoire coment a Everwyk il avoit mys au dit count que tout sanz grace il ne deult passer & auxi preignant ensample de les paroles de seinte escripture coment Jesu Crist ne vorroit faire home fayn en un membre tant seulement mes qil luy seroit fayn en toutz ses membres entierment & veullant pur tant monstrier au dit count pleyne grace pardona a mesme le count les fyn & ranceon qa luy appartenoient a cause del trespas fuisdite le count fait celle partie. Apres quelles matierez ensi terminez lercevesque de Canterbers pria au roy que come le dit Mesquerday darrein passe au temps que le dit count de Northumb. feust en dit parlement mesme lercevesque avoit priez a mesme le count que come le duk d'Everwyk & luy mesmes & diverses seigneurs espirituelx & temporelx & autres personnes par alguns malveullantz avoient estre esclandre de ce que les ditz duk & crevesq; & les autres fuisditz deussent avoir este del covine abbot & assent de monsieur Henry Percy

& monsieur Thomas Percy de la levee de guerre que feust fait par eux encontre nostre dit seigneur le roi le dit cont vorroit alors declarer tout ceo qil favoit en celle matire. A quelle temps mesme le cont pria qil purroit ent estre excusez tanqal temps qil ferroit en sa libertee a quel temps si le roy luy vorroit comander il ferroit prest a monstrier & declarer ceo qil favoit & ent dire la veritee celle partie. Que plerroit a nostre dit seigneur le roi desicome le dit cont soit au present en sa libertee chargier mesme le count sur le serement qil ad fait sur la dite croice de monstrier & declarer overtement en parlement ceo qil sciet en celle matire. Sur quelle charge ensy a luy done mesme le cont dist quunes jour de sa vie il ne favoit des ditz duc ne ercevesq; ne de les autres suifditz riens que sonneroit en derogacion del honorable estat du roi ou de sa roiale majeste mais qils feurent & sont a luy bones & loialx lieges. Et pur tielx mesme nostre seigneur le roi les purroit tenir & reputer & mettre en eux fablement fiancee en peril de salme & par le serement qil ad fait come devant est dit. Et outre ceo le dit cont de Northumb. humblement entremerciant les seigneurs & communes leur bons & entiers coers a luy monstrez leur fist request de remercier nostre dit seigneur le roi de sa grace a lui faite des ditz syn & rancon. Et que si unques il ferroit aucune chose encontre nostre seigneur le roi autre que ligeance demande qils ne ferroient pur luy prier ou request quelconque par celle encheleon mais qils ferroient tout autrement encontre luy. Et auxi mesme le Vendredy adjudgez feust par le roi & les seigneurs en parlement que la levee de guerre faite par les ditz monsieur Henry monsieur Thomas ferroit tenuz pur trefon & ceo sibien de eux mesmes come des autres qil feurent en leur compaigne au temps du dit levee forpris ceux as queux le roi avoit fait grace & pardon les queux grace & pardon le roi voet qils estoient sermement en lour force & vertue.

Ex rotulo parlamenti anno xxxi H. VI. No. 26.

Item, the Friday the 15 day of February it was opened and declared to the lords spiritual and temporal, being in the parliament chamber, by the counsel of the duke of York, that whereas *Thomas Thorpe the Monday the day of the month of the year of the reign of H. VI. 31.* came to the place of the bishop of *Durham*, and then and there took and bore away certain goods and cattle of the same dukes against his will and licence. And thereupon the said duke came and took an action by bill in *Michaelmas* term last past, against the said *Thomas* in the court of the exchequer according to the privilege of the same court, for so much that the said *Thomas* was one of the court; by which privilege he ought to be impleaded in that court of the exchequer in such cases, and in none other court. To the which bill the said *Thomas* wilfully appeared, and had divers days to imparle at his request and desire, and to the said bill and action, answered and pleaded not guil-

ty Whereupon there was awarded in the said exchequer a *venire facias* to the sheriff of *Middlesex* returnable in the said exchequer, and there by the jury that passed between the duke and the said *Thomas*, it was found, that the said *Thomas* was guilty of the trespasss contained in the said bill, and the same jury assessed the damages to the said duke for the said trespasss to a thousand pound, and for his costs ten pound; and thereupon judgment was given in the said exchequer, and the said *Thomas* according to the course of the law was committed to the *Fleet* for the fine belonging to the king in that behalf. And thereupon it was prayed humbly on the behalf of the said duke: that it should like their good lordships, considering that the said trespasss was done and committed by the said *Thomas*, since the beginning of the present parliament: and also the said bill and action were taken and scanned, and by process of law judgment given thereupon against the said *Thomas*, in time of vacation of the said parliament, and not in parliament-time; and also that if the said *Thomas* should be releaved by privilege of parliament, e'er the time that the said duke be satisfied of his said damages and costs: the said duke should be without remedy in that behalf; that the said *Thomas* according to the law, be kept in ward, to the time that he have fully contented and satisfied the said duke of his damages and costs. The said lords spiritual and temporal, not intending to impeach or hurt the liberties and privileges of them that were come for the commons of this land to this present parliament, but equally after the course of the law to minister justice, and to have knowledge what the law will weigh in that behalf, opened, and declared to the judges the premises, and asked of them, Whether the said *Thomas* ought to be delivered from prison by force and vertue of the privileges of parliament or no?

To the which question the chief justice in the name of all the justices after some communication and mature deliberation had among them, answered and said, that they ought not to answer to that question, for it hath not been used afore-time that the justices should in any wise determine the privileges of his high court of parliament, for it is so high and so mighty in his nature, that it may make law, and that which is law, it may make no law: and the determination and knowledge of that privilege belongs to the lords of the parliament, and not to the justices; But as for declaration of proceeding in the lower courts in such cases, as writs of *superfedeas* of privilege of parliament to be brought and delivered, the said chief justice said, that there be many and divers *superfedeas* of privilege of parliament brought into the courts, but there is no general *superfedeas* brought to surcease all process; for if there should be, it should seem that this high court of parliament that ministreth all justice and equity, should let the process of the common law, and so it should put off the party complainant without remedy, for so much as actions of common law be not determined in this

this high court of parliament. And if any person that is a member of this high court of parliament be arrested in such cases as be not for treason or felony, or security of the peace, or for a condemnation had before the parliament, it is used that all such persons should be released of all such arrests, and make an attorney, so that they may have the freedom and liberty freely to attend upon the parliament.

After which answer and declaration it was thoroughly agreed, assented and concluded by the lords spiritual and temporal; that the said Thomas according to the law, should remain still in prison for the causes aforesaid, the privilege of the parliament, or that the same Thomas was speaker of the parliament notwithstanding. And that the premises should be opened and declared to them that were come for the commons of this land, and they should be charged and commanded in the king's name, that they with good haile and speed proceed to the election of another speaker.

The which premises, forasmuch as they were matters in law, by the commandment of the lords were opened and declared to the commons by the mouth of *Walter Moyle*, one of the king's serjeants at law, in the presence of the bishop of *Ely*, accompanied with other lords in notable number; and there is commanded, and charged to the said commons by the said bishop of *Ely* in the king's name, that they should proceed to the election of another speaker with all godly haile and speed, so that the matters for which the king called this parliament, might be proceeded in, and this parliament take good and effectual conclusion and end.

Item 16to die Februarii. tunc prox. sequenti praefati communes per quosdam de sociis suis declaraverunt dominis spiritualibus & temporalibus in praesenti parlamento, quod ipsi mandatum ex parte domini regis pridie sibi injuncti: cum omni diligentia exequentes elegerunt loco praefati Thomae Thorpe, Thomae Carleton militem prolocutorem suum, humillime deprecando quatenus praefatus dominus rex hujusmodi electionem vellet acceptare.

Quibus per dominum cancellarium Angliae de mandato dicti domini regis, & avisamento concilii sui extitit responsi. quod idem dominus rex de electione praefati Thomae Carleton se bene contentavit, injungendo eis quatenus ad expeditionem negotiorum parlamenti praedicti cum omni diligentia procederent.

Judgments upon writs of error in parliament.

IF erroneous judgments be given in the king's bench, or in the exchequer chamber, upon the statute of 27 *Eliz.* cap. 8. the party grieved may have his writ of error returnable in parliament, but not upon judgment given in the com-

mon pleas, until the same be reversed or affirmed in the king's bench, as it was answered in parliament under *Edward III.* in the case of the bishop of *Norwich*. Upon the writ of error the lord chief justice of the king's bench is to bring in the record, and a transcript of it into the parliament, and there leave the transcript, but carry the record back. And thereupon the errors being assigned; or, as some examples are, before the assignamus of the errors, order is to be given that a *scire facias* be awarded against the defendant, upon whose appearance and examination of the errors by the lords, the judgment given is either affirmed or reversed.

After the record thus brought in, *clericus parlamenti habebit custodiam inde, & per dominos tantum, & non per communiatem assignabitur senescallus, qui cum dominis spiritualibus & temporalibus per consilium iusticiariorum procedat ad errorem corrigendum*^b.

In which words it is observed, that the lords have power to make a delegation of their jurisdiction to a person chosen out of themselves, as a steward to judge for them. As also they did in their proceedings against *Gomeniz*, and *Weston*, under *Richard II.* when they appointed the lord *Scroope* for steward of the parliament to arraign the offenders. But this rests at their pleasure whether they will judge themselves together, or so appoint a steward.

Memorandum quod Christophorus Wray miles capitali iusticiarius de banco regis secum adduxit in parl. in camera parl. inter duos bre' de errore & billa de regina indors. ac rotulat. In quibus continebantur placita & processus in quibus supponebatur error, & ibi reliquit transcript. totius recordi cum cler. parl. simul cum brevi de errore in parlum. Et super hoc venit Richardus Herbert, Joh. Aubrey, Willielmus Filliam, & Simon Browne in propriis personis suis in parlamento & statim dixerunt quod in recordo & processu praedicti. in redditione iudicii praedicti. manifeste est erratum. In hoc quod postquam iudicium praedicti. in loquela praedicti. versus praefati Thomae Gomieli reddit. fuit, & antequam praedicti. Johannes Hunt prosecutus fuit & impletravit praedicti. primum breve de scire facias versus praefati Ric. Herbert & coeteros praedictos manucaptors praedicti. Thomae Gomieli nullum breve de capias ad satisfaciendum pro debito & damnis praedicti. per praefati Johan. Hunt in parlamento praedicti. proseguend. & retornat. fuit versus praefati Thomae Gomieli uti per consuetudinem curiae dictae dominae reginae coram ipsa regina a tempore cujus contrarii memoria hominum non existit in eadem usitat. & approbat. brev. de cap. ad satisfaciendum versus eundem Thomae Gomieli, pro debito & damnis praedicti. in parl. praedicti. prosegui & retornari debet antequam

^a Rot. parl. 50. E. III. n. 38.

^b 22 E. III.

^c 3. Hindelin's case. Rot. parl. 1 R. II. n. 28, 29. 2 R. II. n. 18, 19. &c. 20 R. II. n. 26. The case of the earl of Salisbury. 15 R. II. n. 23. 16 R. II. n. 17. The case of the dean and chapter of Litchfield, and the prior of Newport Pagnell. 17 R. II. n. 13 and 14. 18. H. VII. 19, 20. Flowerden's case.

aliquod brev. de sci fac. versus manucaptors praedicti. in loquela illa impetrar. seu profectui deberet, licet consuetudo & forma caption' recognition' in curia praedicti: usi fuerunt in forma praedicti viz. si contigerit eundem Thomam Gomiel in parlamento praedicti convinci, tunc iidem manucaptors concesserunt, & quilibet eorum per se concessit tam praedicti debitum quam omnia damna & cussag. quae praefat. Jo. Hunt. in ea parte adjudicentur de terris & cattalis & eorum cujuslibet fieri, & ad opus praedicti. Johannis Hunt levare, si contigerit praedicti. Thom. Gomiel debitum & damna illa praefat. Johannis Hunt minime solvere, aut se prisonae marestall. dominae reginae coram ipsa regina ea occasione non reddere, &c. Et petiere iidem Rich. Herbert & alii praedicti quod judicium praedicti & processus super bre. de sci fac. prosecut. in curia dominae reginae coram ipsa regina revocetur, annulletur, & penitus pro nullo habeatur. Et super hoc domini per consilium justiciariorum post longam & maturam deliberationem cum consensu adjudicaverunt quod judicium praedicti & processus super bre. de sci fac. prosecut. in curia dicti domini reginae coram ipsa domina regina revocetur, annulletur & penitus pro nullo habeatur.

CHAP. V.

Bills passed and judgments given without assent of the lords spiritual.

Under Edward III. a petition of the commons was thus.^a

Nous ne volons foissir que nul paiement soit fait as cardinaux pur leur demoeer en Fraunce de treter hors du roialme d'Engleterre de pees ne de trewe.

The answer is,

Quant a les despenses de cardinaux. Il semble as countes barons & autres sages laiz gentz du conseil le roi que les communes demandent reson & pur ce ils sacordent que ensi soit.

The like is there in two petitions of the commons against the clergy, carrying money to Rome, and cardinals having benefices here. Divers ordinances against the church of Rome are agreed by the king, the lay peers and commons, but all the prelates made protestation of not assenting or doing what may be, or turn in prejudice of their estate or dignity.^b

The power and direction for justices of the peace is ordained at the complaint of the commons by the king, *par assent seignours temporals.* ^c And so only divers times without mention of the lords spiritual, who indeed under Edward III. protested, that they had not to do with matters of keeping the peace.^d

The commons exhibit a petition against procurations from Rome, and benefices obtained by letters thence, &c.^e

Ordeine est, & establi per ladvis & assent des seignours temporels, que nul des liges le roy nautre persone quelconque de quel estat ou condicion qil soit ne preigne—d'aucun benefice deinz le dit royaume—Et si aucun face le contraire en aucun point contenuz en ceste ordeinance, encourge la peine & punissement contenuz en le statut de provisors, fait en temps le roy E. aiel nostre seigneur le roi gorest lan de son regne 27.

A petition in these words.^f

Item que les appelez pursuivez accusament processe judgementz & execution faitz & renduz en cest present parlement soient approuvez affermez & establiz chose faite duement pour le bien & profit du roy nostre dit seigneur & de tout son roialme, nient contresleant que les seignours espirituels & procurateurs des seignours espirituels soi absenteront hors du parlement a temps des ditz judgementz renduz, pur honeste & salvation de leur estat, come contenu est en une protestation pur mesmes les seignours espirituels & procurateurs livree en cet present parlement.

The king granteth it, and the protestation of the clergy is there entered, as followeth.^g

Per enchefon que certains matieres furent moeves en cest present parlement que touchent overtment cryme lecevesque de Cantirbriz & les autres prelatz de sa province, firent une protestation en la fourme & paroles gensuient.

In Dei nomine, amen. Cum de jure & consuetudine regni Angl. ad archiep. Canturbur. qui pro tempore fuerit, necnon caeteros suos suffraganeos, confratres & coepif. abbates & priores, aliosque prelatos quoscunque per baroniam de domino nostro rege tenentes pertinet in parlamenti regis quibuscunque ut pares regni praedicti personaliter interesse, ibidemque de regni negotiis & aliis ibi tractare consuetis, cum ceteris dicti regni paribus, & aliis ibidem jus interessendi habentibus, consulere, & tractare, ordinare, statuere, & definire, ac caetera facere quae parliamenti tempore ibid. imminet. faciend. in quibus omnibus & singulis nos Willielmus Cant. archiepif. totius Angl. primas & apostolice sedis legatus, pro nobis nostrisque suffraganeis, coep. & confratribus, necnon abbatibus, prioribus & prelatiis omnibus supra dictis, protestamur, & eorum quilibet protestatur quod per se, vel procuratorem hic fuerit modo presens, & publice & expresse, quod intendimus & intendit, volumus ac vult eorum quilibet in hoc presenti parlamento, & aliis, ut pares regni praedicti, more solito interesse, considerare, tractare, ordinare, statuere, & definire, ac caetera exercere cum caeteris jus interessendi habentibus in eisdem, statu & ordine nostris, & eorum cuilibet in omnibus sem-

^a Rot. parl. 20. E. III. n. 37. 38. 39. See also to this purpose, 28. E. III. m. 2. Vide stat. edit. 38 E. III. c. 1.

^b Rot. parl. 6. E. III. m. 3. n. 3.

^c 11. R. II. n. 9.

^d Rot. parl. 1. R. II. par. 3. n. 37.

^e Rot. parl. 2. R. III. in schedul. m. 31. & m. 38. five 32.

^f Rot. parl. 12. R. II. p. 2. n. 38.

^g Rot. parl.

^h Rot. parl.

per salvois. Verum, quia in presenti parlamento agitur de nonnullis materiis, in quibus non licet nobis aut alicui eorum juxta sacrorum canonum instituta, quomodolibet personaliter^b interesse; ea propter pro nobis & eorum quolibet protestamur, & eorum quilibet hic presens etiam protestatur, quod non intendimus, nec volumus, ficti de jure non possumus nec debemus, intendit, nec vult aliquis eorundem in presenti parlamento, dum de hujusmodi materiis agitur vel agetur, quomodolibet interesse, sed nos & eorum quolibet in ea parte penitus absentare jure paritatis nostre, & cujuslibet eorum interessendi in dicto parlamento, quoad omnia & singula iubi exercenda, nostris, & eorum cujuslibet statui & ordini congruentia in omnibus semper salvois. Ad hoc insuper protestamur, & eorum quilibet protestatur quod propter hujusmodi absentiam non intendimus, nec volumus, nec eorum aliquis intendit, nec vult, quod processus habiti, & habendi in presenti parlamento, super materiis antedictis, in quibus nec possumus, nec debemus, ut premittitur interesse, quantum ad nos & quolibet eorum attinet futuris temporibus, quomodolibet impugnentur, infirmantur, seu etiam revocentur.

Which protestation was read in full parliament by the commandment of the king, and assent of the lords temporal and commons. In like manner make protestation the bishops of Durham and Carlisle, mutatis mutandis.^c This was upon the occasion of the appeal of treason in the same parliament commenced by Thomas duke of Gloucester, and others, against Alexander archbishop of York, Robert de Vere duke of Ireland, and others.^d

But although they thus absented themselves, they made no proxy at this time to assent in their room; as afterwards they agreed to do in cases of judgment of death. But the first use of such proxies is in the 21 of Rich. II.^e neither at all such, proxies or assent of the bishops; For under H. V. the earl of Salisbury by petition in the nature of a writ of error, sued that the attainder of John the late earl, father to the petitioner, in the second of H. IV.^m might now be reversed, and amongst the errors assigned, one was, that he had been adjudged sans assent des prelatz que sont pieres & en parlement. But it was in parliament now adjudged that this was no error.^f

The archbishops of Canterbury and York, for themselves and their clergy, make protestation not to consent to any statute made in this parliament; Quatenus ea in restrictione potestatis apostolicæ, aut in eversione ecclesiæ dignitatis tendere dignoscantur, which at their request was enrolled in parliament; * Yet an act passed at that time, and is publick, against the popes giving of benefices by way of provision in England.^g

In the beginning of queen Elizabeth, when divers acts passed touching matters of the church, as service and sacraments, and church possessions, &c. the bills passed, dissentientibus all the bishops, as it is especially entered in the ⁹ journals, with particular enumeration of all their names.

Wherunto may be added that assertion of the judges in that great deliberation had under Henry VIII. touching the power regal in the church, as the words are reported. *Que nostre seignour le roy poit assens bien tener son parlement per luy, & ses temporall seigniors, & per ses commons, tout sans les spirituale seigniors.*

CHAP. VI.

Their appointing judges out of themselves for examination of judgments and delays of other courts.

THIS is given them by a statute of Edward III. in these words. *Item, because divers mischiefs have happened of that—That in divers places, as well in the chancery, as of the king's bench, common pleas, and in the exchequer, the justices assigned, and other justices to hear and determine deputed, the judgments have been delayed, sometimes by difficulty, and sometimes by divers opinions of the judges, and sometimes by other occasions; It is assented, established and agreed, that from henceforth at every parliament, shall be chosen one prelate, two earls, and two barons, that shall have commission and power of the king, so hear by petition to them delivered, the complaints of all those that will complain then of such delays or grievances made, and they shall have power to do come before them at Westminster, or elsewhere, where the places of any of them shall be, the tenor of records, and processes of such judgments so delayed; and to cause the same justices to come before them, who shall be then present to hear their cause and reason of such delays; which cause and reason so heard by good advice of themselves, the chancellor, treasurer, the justices of the one bench, and of the other, and other of the king's council, as many, and such as to them shall seem convenient, shall proceed to take a good accord, and make a good judgment.*

And in the same parliament accordingly, the archbishop of Canterbury, the earls of Arundel and Huntingdon, and the lord Wake, and the lord Basset were assigned to the same purpose. And although the justices, chancellor, treasurer, privy seal, and others, had before taken oath, &c. yet it was ordained that those of the baronage assigned, shall give them a new oath, and increase, or diminish the ministers of justice, as they shall see cause.

^b It was ordained in a council held at Westminster, that no clergymen should square judgment, and be that did was to be deprived of his dignity and orders, Roger de Hoveden in H. II. p. 1. 10. & Gervail. ^c Rot. parl. 11. R. II. n. 9. 10. ^d Rot. parl. 11. R. II. n. 8. ^e Rot. parl. 21. R. II. n. 9. 10. ^f Rot. parl. 2. H. IV. n. 10. 11. ^g Rot. parl. 1. R. II. n. 24. & in reg. Courtney, fol. 132. ^h 13 R. II. par. 2. c. 2. ⁱ 13 R. II. par. 2. c. 2. ^j 7 H. VIII. Kelw. 124. b. ^k 16 E. III. c. 1.

CHAP. VII.

Their tenants of antient tenancies, being discharged of paying the charges of knights of the shire.

THE commons exhibit a petition, That whereas the tenants of the lords that did hold by barony, and summons to the parliament, are discharged of paying towards the expences of knights, &c. that the king would declare the certainty of it. But the answer of it is only, As at other times, &c.

A like petition and answer, is afterwards under the same king in a petition, touching the same thing.

Under *Richard II.* it is supposed that all ought to pay, but those which come to parliament by summons, by writ, and do stay there at their own charges, &c.

In a petition afterwards, it is supposed that the tenants of such lands as were immediately held of the lords of the parliament, contributed not to those expences, but it is complained against, and the answer is only. *Soit use come ad esto use devant ses heures, & si aucun se seinte grevez, monstre al chancelier sa grevance en especial, & droit luy serra fait.* Yet by a statute, which is not in the rolls, of three years before, the tenants of the lords, and the lords themselves shall pay for such lands, as of late times they have purchased, being before contributory.

To this belongs that in *Fitzherbert*, The villains of lords, who come to parliament, shall not be contributaries to the expences of the knights of the counties, who come to the parliament. And to this purpose the lords may by letters in their own names command the sheriff that he distrain not their villains.

¹ Rot. parl. 28 Ed. III. n. 33.
c. 12. & 11. Hen. IV. 2.

² Rot. parl. 41 Ed. III. n. 45.
³ Stat. Rev. 21. 7.

⁴ Rot. parl. 15 Rich. II. n. 17.

⁵ 12 Rich. II.



Privileges, or special rights, that concern the barons that have place in parliament, as they are every one single in their private estates, which are also communicated to baronesses.

C H A P. I.

Touching oath and protestation upon honour.

AL L oaths are either promissory or assentatory; the first being that which binds to a future performance of trust; the second, that which is taken for discovery of a past or present truth.

The first kind, they as occasion required, used, in taking the oath of all the barons for the maintenance of the great charter, and the like under king *John*^a and *Hen.* III.^b As also swearing of the lords in parliament, in the time of *Hen.* VI. that they should not take parts in the great controversy between the earl marshal, and the earl of *Warwick*.^c And the oaths of the divers lords appointed for the keeping of the ordinances of the parliament in 8 and 11 *Hen.* IV. where yet the prince was not sworn, being one of those that were appointed for the keeping of the ordinances; *pur la hautesse & excellence de son honourable persone*, as the words are in the roll.^d So under *Hen.* VII. the lords spiritual and temporal swore in the parliament to the article of taking care for the preserving of the peace,^e and under *Hen.* VIII. to the bill of succession.^f But under *Rich.* II. the archbishop of *Canterbury* challenged, that neither he nor his predecessors were compellable to any oath to any but to the king. And this kind of oath is frequently taken by such barons as undertake the great offices of the kingdom. And they are all liable to the like by their reatures, by fealty, and by statutes of the oath of allegiance.^g But of these kinds of oaths for the supremacy they are discharged by the first statute that gives it.^h And in the case of effoiners, wherein by the antient law, the effoiner was to swear that the party effoined should appear at a certain day, all barons and baronesses were excepted from the oath, and instead of the oath they put in surety. *Ratio vero diversitatis* (saithⁱ *Bracton*) *talis esse poterit, ut videtur, quod ita nobiles & dignae personae in warrantizatione effoinii non per se jurabunt, sed per procuratores, scilicet, plegios suos.*

Assentatory oaths are in cases of trial by twelve or twenty four appearing as witnesses, or being defendants, in courts which proceed by bill and answer, or when examined as plaintiffs in actions of debt brought upon arrarages of account.

In cases of trial by twelve, they are discharged of the oath, that is, in cases of trial of their peers, in which they answer guilty or not guilty, only upon honour,^k for in other trials they have no part, but are exempted from being impannelled in juries, *nisi eorum sacramentum adeo sit necessarium quod sine illis veritas inquiri non possit.*^l And thence was it, that some barons under *Edward* I. of the marches of *Wales*, refused to swear before the justices of *Oyer* and *Terminer* upon an enquiry to be made by them and others, of certain outrages committed by *Gilbert of Clare*, earl of *Glocester*, against *Humphry* of *Bobun* earl of *Hereford* and *Essex*. Those barons were *John de Hastings*, *John Fitz Reynold*, *Roger de Mortimer*, *Theobald de Verdon*, *John Tregoz*, and *Jeffrey* of *Camvill*, to whom *dictum est* (as the roll saith) *ex parte dom. regis quod pro statu & jure regis, & pro conservatione dignitatis coronae & pacis suae apponant manum ad librum, ad faciendum id quod eis ex parte domini regis injungetur. Qui omnes unanimiter responderunt, quod inauditum est, quod ipsi vel eorum antecessores hactenus in hujusmodi casu, ad praestandum sacramentum aliquod coacti fuerunt.* And afterwards the oath being offered them, they answered every one by themselves, *quod nihil inde facerent sine consideratione patrium suorum.*^m

Barons being witnesses.

In cases of witnesses, examples are, that they give in their testimonies upon honour only. In the court of delegates in the third of *E. VI.*ⁿ in the proceeding against *Gardiner* bishop

^a 17 *Joh. Regis March. Paris*, fol. 120.

^b 41 *Hen.* III. item p. 1297. & 1315.

^c Rot. parl. 2. *Hen.* IV. n. 66. 11. *Hen.* IV. n. 39. & vide stat. 11 *Rich.* II. c. 4.

^d *Diur.* parl. 15 *Hen.* VIII.

^e 1 *Hen.* IV. s. 10 Ed. IV. c. 15. *Hen.* VIII. 15. Statut. lib. 5 cap. 1. q. Co. 30. b.

^f 48 Ed. III. 30. 48. aff. 6. 31 *Hen.* VI. 46. 17 *Hen.* VIII. 32. regid. 179. b. Fitz. N. B. 165. E. 6. Co. 55. a.

^g Act. in foro Delegat. 1550.

^h 1 *Jac.* c. 4. 7 *Jac.* c. 6.

ⁱ *Elia.* c. 1.

^j 1 *Jac.* c. 4. 7 *Jac.* c. 6.

^k 1 *Jac.* c. 4. 7 *Jac.* c. 6.

^l 1 *Jac.* c. 4. 7 *Jac.* c. 6.

^m 1 *Jac.* c. 4. 7 *Jac.* c. 6.

ⁿ Parl. 1. *Hen.* VI. n. 10.

^o *Hen.* VII. parl. 1. m. 14.

^p Lib. 5. tract. de Effoinis.

^q 21 Ed. III. 18.

^r Parl. parl. 20. Ed. I. n. 1.

of *Winchester*, upon a special commission from the king; the then lord chancellor, and marquess of *Northumberland*, and the earls of *Wiltshire* and *Bedford*, are examined only upon their honour, or sometimes upon their allegiance or fidelity to God and to the king. And this was upon the special privilege of such persons. For both by the civil laws and common, no testimony is to be taken regularly but upon oath.

In chancery, in a case between *Jeffery* and *Jeffery*, and in another between *Blighton* and *Dawtry*, *Thomas* lord *Buckhurst*, under queen *Elizabeth*,^a delivers his testimony only upon honour.

In the court of chivalry under *R. II.* ° in the great case between *Sir Richard Scroope* appellant, and *Sir Robert Gravenor* defendant, touching matter of arms, the attestations taken by commission from *John of Gaunt*, the earl of *Derby*, the earl of *Northumberland*, the duke of *Tork*, and the earl of *Arundel*, are, for ought appears, without oath. For whereas others are sworn, the entry of their depositions is: *Pray and requests according to the right of arms by the procurator of master Richard Scroope, to testify and say, &c.*

And amongst others, the earl of *Devonshire* was examined by commission, by *John Kentwood*, who, in the return of his commission and the depositions certifies the court, that he had sworn all the witnesses, there being none of the nobility, but only this earl in his return, who was not sworn, but spake in the loyalty of his chivalry.

But in the multitude of witnesses of this cause, divers barons are sworn, as the lord *Poyning*, the lord *Scaler*, the lord *Gray*, the lord *Ruthen*, the lord *Basset*. To every of which names in the attestations is added, *sworn and examined*. Agreeable hereunto is the examination in the case of *Alice Perrers*, in the beginning of *Rich. II.* °

Barons answering to bills as defendants.

For barons answering as defendants in chancery, are divers precedents of their answers in the times of *Hen. VII.* and *Henry VIII.* But there are none of that time that clears it, whether they were sworn or no; for the answers of that time, as also of the times following, till about the middle of *Elizabeth* or later, are frequently filed without any *jurat*. to them.

But under queen *Mary*,^a in a suit by *William Armer*, against *Thomas* lord *Wentworth*, touching the inheritance of copy-holds in *Stepney*, the defendant presents in his answer with master *Sackford*'s hand to it, who was his counsel. And on the upper part of the answer, where *jurat*. is sometimes, but rarely in that age written, these words are found; *This answer is made by counsel and the defendant not sworn by order of court.*

Then in queen *Elizabeth*'s time, the lord *Dacres* being plaintiff against the lord *Buckhurst*, and *Parker*, and *Manwood*, these two defendants are sworn, but not the lord *Buckhurst*.

And afterwards the countess of *Rutland*'s answer is inscribed *per traditionem comitis sue super honorem suum.* ° So the countess of *Northumberland* In *virtute honoris sui agnovit responsonem suam esse veram*; as the entry is upon her answer at that time.

And in the countess of *Rutland*'s case, where she with *Sir George Chaworth* were defendants, about the latter end of queen *Elizabeth*,^b the *dedimus potestatem* was, *quod comitissam super materiam in petitione contentam examinaretis*, and in the fame, the other defendant was to answer upon his oath *super evangelia*; as also a *dedimus* towards the end of queen *Elizabeth*,^c was directed to *Roger Bromley*, and *Richard*

upon the bill of complaint of one *Brooke* against *George* earl of *Huntington*, to take his oath *super honorem, &c.* About which time ° also the lord *Eure* put in his answer *super honorem* only, to the bill of *John Barnes* and *Robert Talbois*.

In other courts, as the star-chamber, and court of wards, it was questioned in queen *Elizabeth*'s time whether, barons being defendants, should put in their answers upon oath. And in the court of wards, an order was made in the lord *Mountague*'s case, ° that they should, and that so the course should be henceforth constant. The like course hath been held of late time in the star-chamber, as also in the ecclesiastical proceedings. And about the end of queen *Elizabeth*'s time in chancery ° also, the lord *Warton* by a compulsory order answered there upon oath. And within these few years, the earl of *Shrewsbury* was ordered to answer upon oath, to one *Revell* being plaintiff there. ° And divers noblemen have been sworn to their answers in chancery since the beginning of the king; ° and some in queen *Elizabeth*'s time also. ° Neither is the time of queen *Mary*, and *Edward VI.* wholly without example. But the sum of all seems this, That according to the claim of the barons in 20 *Ed. I.* they were not antiently till about the end of queen *Elizabeth*, or the time of our present sovereign compellable to swear to their answers. For the first compulsory order to that purpose, falls in the 33d of *Elizabeth* in the court of wards. But that some of them taking no advantage of their privileges in this case, voluntarily took the oath, and others standing upon their antient right, put it in only upon honour; as also we see in that case of *Gravenor* and *Scroope*, and *Alice Perrers* under *Richard I.* For if it were not a special privilege, it will fall out, that in all the examples where they were not sworn, the judges committed great injustice in receiving their answers and depositions without oath, if they

^a Mich. 21. Eliz. in aft. cur. apud examinat.

^b Rich. II. m. 43.

^c 44. Eliz.

^d Mich. 4. Jac.

^e 1. Eliz. Butler verfi. dom. Mordant. M. 12 & 13. Eliz. Campt. v. com. Bedford. Mich. 21. 22. Eliz. ibidem Butler verfi. dom. Rich. Hill. 4. viscount Mountague &c. H. 3. & 4.

^f Rot. procels. 10 Rich. II. & 12. in arce Lond.

^g 18 Junii Mich. 31. & 32. Eliz.

^h 40. Eliz. apud Tortill.

ⁱ Ordo 10. let. 10. Jac. in Canc.

^j 13. Eliz. 1. Jac. in Canc.

had not been subject by compulsion to an oath; no otherwife than if a judge of the common law should admit evidence given to a jury, or take a verdict without oath, which were not excusable. And a few examples of their giving in answer without oath, upon this reason, are of great weight against many that shewed that they were voluntarily sworn. And those orders which were compulsory, are of so late time, and so weak power, that they cannot at all take any right from the baronage which was before settled in them.

Examined as plaintiffs in actions of debt upon arrerages of account.

By the statute of 5 H. IV. c. 8. in actions of debt upon arrerages of account, the judges have power to examine the attorney of the plaintiff, or whom they please, and this examination was meant, and hath been practised upon oath. Yet in an action brought by the lady of *Aburgavenny*,^c being a baroness, against another in the time of Henry VI. when the counsel of the defendant desired that the plaintiff might be examined, *Cokaine* then justice said, that they should not do well to make her, being a baroness, come to be examined. And however the statute, *est general, & fait pur chesteun bone, seil, pur baut & bas*, (as the words of the book are) yet he saith, the law will be otherwife, and different between a lord or lady, and between another common person.

Of the form that was used in swearing of spiritual and temporal barons.

In the form of swearing the promissory oath, a difference hath been amongst the barons of parliament. The temporal barons^d under H. VII. swear with their hand upon the book, the spiritual with their hand upon their breast, i. e. the one *tactis*, the other *visis evangeliiis*. And oftentimes antiently this oath was taken by the lords in the house upon the archbishops cross.^e At this day the spiritual lords challenge it, and sometimes use to swear *visis* only, as a thing to be done by the privilege of the church. But there is the testimony which shews, that all the bishops in a provincial synod did swear here their *juramentum corporale*,^f which is *tactis*. And howsoever it be a privilege of nobility in some other states, or of gentry, to depose by writing without a corporal oath,^g as in *Bohemia, Austria, Bavaria*, &c. yet there is no sufficient certainty with us, for an established difference of form in swearing.

CHAP. II.

Trial by peers.

IN all cases of treason or felony,^h or imprisonment of either of these offences, a temporal lord of parliament is to be tried only by his peers, if arraigned by indictment, *per judicium parium*

suorum, or of twelve or more temporal barons of parliament.ⁱ This holds as well in all cases made treason or felony by statute, as received antiently to be so by the common law, as justice *Stamford*^k expressly affirmeth, although usually in statutes which make any thing treason or felony, a special clause be inserted for peers to be tried by their peers, according to the known trial of peers, as also to the new trial, where perhaps more need was of such a clause. Upon the statute of remainder^l made for trial of offences committed by the *English* in *Scotland*; it is added, that if the offender shall be a peer of the realm, then his trial shall be by his peers. And this is clear for all temporal barons and their ladies.^m But it hath been doubted whether the same law be in case of trial of spiritual barons or no. And in that doubt one special argument among others hath been made from the name of peers; some concluding thus: spiritual barons are no peers; therefore not to be tried by their peers. Others for the other part thus, spiritual barons are peers, therefore to be tried by their peers. But of these two arguments, the first is false in matter, the second in form.

For the first. It is true and plain, the spiritual lords are peers, and so the antecedent false. The testimonies justifying them to be so, are very frequent. In the bishop of *Winchester's* case, who departed from the parliament at *Salisbury*, about the beginning of *Edward III.* and was questioned for it afterwards in the king's bench, he pleaded to the declaration: *Quod ipse est unus e paribus regni & prelatius, &c.*ⁿ and in that short disputation of the case which is left in the year books,^o he is supposed clearly both by the court and counsel to be a peer. So afterwards under the same king, in a writ of ward brought against the bishop of *London*, he pleaded to issue, and the defendant could not have day of grace, for the court said, (as the words of the book are) *que vesques est peere de la terre. Et hoc erat causa, &c.*^p And in a like case upon an action of trespass against the abbot of *Abingdon*, who was one of the lords spiritual, day of grace was denied against him, because he was *peere de la terre*.^q So expressly upon the question of having a knight returned into a jury where a bishop was defendant in a *quare impedit*, the rule of the court was, that it ought to be so, because the bishop was *peere de la realme*.^r So in the judgment given against the bishop of *Norwich* in the time of *Richard II.* he is in the roll expressly allowed to be a peer, for he had took exceptions that some things had passed against him without assent or knowledge of his *peers du royaume*. To which exception the answer was, *It beboves you not at all to touch your prelate of only certain misprisons, which you as a soldier of the king, &c. have done and committed, &c.* Here is to be added that challenge of *Stratford*, archbishop of *Canterbury* under *Ed-*

^c 3 H. VI. 41. ^d Rot. parl. 1. H. VII. part 1. m. 14. n. 5. ^e Gal. observ. prac. 100. fol. 22. ^f 10 E. IV. 6. Stamford lib. 3. c. 1. 9. Co. 30. b. ^g Fol. 153. b. ^h 3 E. III. coram rege Rot. 9. ⁱ 3 E. III. 11. 19. ^j enquest. 43. challenge 115. Plowd. 117. & ve. Hill. 3 E. III. Rot. 23. coram Rege.

^k Rot. parl. 14. E. III. n. 45.

^l Not in appeals 10. E. IV. 6. Stamford 1. 3. c. 1.

^m 14 Jac. c. 1.

ⁿ 21 E. III. 9. pl. 17.

^o 27 E. III. 12.

^p Circa E. II. de templo in

^q 1 H. IV. 1

^r 14 Jac. c. 1.

^s 20 H. VI. c. 9. 6. Co. 52. b.

^t 13 E. III.

ward III. when upon his being excluded the parliament, he thus challenged his place. *Ego tanquam major par regni post regem, vocem primam in parlamento habens, jura ecclesiae mea tantum vendico, & ideo ingressum in parlamento peto.* The same is justified by the clergy touching their *jus paritatis* before recited at large and entered in the parliament roll. And in the assignment of the errors under Henry V. for the reversal of the attainder of the earl of Salisbury, one error is assigned, that judgment was given without assent of the prelates, *queux sont peers en parlement.* And although that were adjudged to be no error, yet it is allowed clearly in the roll, and the petition, that they were peers. So in an act of parliament under the same king, the bishops and archbishops of Ireland, are called peers of that kingdom. And divers other passages occur touching this name of prelate; neither can any scruple be further made of it.

But as this is clear that they were peers, so also it is clear that they were not by the law to be tried, as temporal barons, by their peers. And the conclusion of the contrary drawn (as before) out of their being peers, is wholly without consequence, this being a point of the common law, and that of common law, as that is distinguished from acts of parliament, which falls out generally to be only the known and received custom within the kingdom. If the practice and custom of the kingdom be therein observed, the point of law may be soon resolved. In the practices and customs divers bishops are found to have been arraigned, and legally tried upon capital offences, yet all that have been so, have had their trial only by common juries. And whether by statute any alteration be of this common law, shall presently also be examined.

That practice and custom appeareth in particular examples found from the time of Edward II. to the age next before us, thus collected. "Adam, bishop of Hereford, under Edward II. was indicted of divers felonies, and of joining with Roger Mortimer. He is arraigned in the king's bench; and upon question how he will be tried, he saith: *Quod ipse est episcopus Heref. ad voluntatem Dei, & summi pontificis, & quod materia praedicti. articulorum sibi imposit. adeo ardua est quod ipse non debet in curia sic super praedictis sibi impositis respondere, nec inde respondere potest absque offensa divina, & sanctae ecclesiae.* Hereupon day is given over, and then the indictment is brought into the parliament, whereupon his arraignment, he gives the like answer. And Walter, archbishop of Canterbury *petit eum, & ei liberatur,* and this is commanded that he have him ready at a certain day in the king's bench. *Es praecceptum est vicecomiti Hereford. quod venire faciat coram domino rege tot & tales, &c. ad inquirend. prout moris est, &c.* And a common jury is returned, which finds the bishop guilty, whereupon he is committed to the archbishop as convict, and his lands and goods are seized

into the king's hands.

Here was the bishop tried by a common jury, although it appears both in the record, and in the history of that time, that the whole clergy earnestly endeavoured to have kept him from conviction, but no pretence of any right of trial by peers is once mentioned in this behalf, though other complaints are full enough expressed against the whole proceedings.

Under Edward III. "John de Isle brother to Thomas de Hen, bishop of Ely, was indicted in Huntingdonshire; that he with divers others *per assensum, & procuracionem episcopi* 28 E. III. die Lunae post festum Sancti Jacobi, burnt the house of the lady Wake at Colne, by Somersham, & quod praedictus Thomas episcopus sciens praedictam combustionem per praedicti servientes suos esse factam dictos servientes apud Somersham postea recepit, &c. And also it was found before the sheriff and coroner that 29 of Ed. III. the bishop was *de assensu* of the murder of one William Holme, slain by Ralph Cartels and Walter Ripton dicti. little Watt, upon malice conceived against Holme, because he followed the suit of the lady Wake. The principals were attained by out-lawry, the bishop is arraigned, and upon question how he will be tried, *dicti, quod est membrum dom. papae, & quod ipse absque ordinario suo, viz. venerabili patre domino Simone archiepiscopo Cantuari. Angliae primat. respondere non potest. Et super hoc idem archiepiscopus praesens hic in curia petit, quod dictus episcopus Eliensis deselonis praedicti sibi impositis hic coram laico iudice, non cogatur respondere. Et ut sciatur inde rei veritas per inquisitionem patriae, &c. praeccepti est vicecomiti Huntingdon quod venire faciat coram dom. rege in octab. sancti Mich. &c. ubicunque &c. 24 de iust. de Somersham, & idem dies datus est episc. &c. Ad quem diem coram domino rege venit praedicti episc. in propria persona & similiter jurat. veniunt qui electi, iurati, jurati & conerati, si idem episc. de assensu praedictorum Rand. & Walteri & de recept. eorumdem sit culpabilis necnon. Dicunt super sacramentum suum quod idem episc. est in nullo culpabilis, sed dicunt quod idem episc. post feloniam recepit ipsos apud Somersham, sciens ipsos feloniam fecisse. Ideo inquiratur de bonis, catallis, terris & tenementis, &c. Et super hoc praedictus archiepisc. praesens in curia petit ipsum episc. tanquam membrum ecclesiae sibi liberari, & ei liberatur custodiend. prout decet, &c. And so writs were sent out to the sheriffs of all shires where he had goods or lands to seize them for the king's benefit. And in this record it is observable, that the jurors were tried, which proves, that the bishop had his challenges to them at his trial.*

About the beginning of Henry IV. Thomas Merkes bishop of Carlisle was indicted of treason before Thomas earl of Warwick, and other justices of Oyer and Terminer in Middlesex, the bishop standing before committed to the tower, for the same offence. *Et hoc iustificat.*

¹ Stat. 4. H. V. c. 6.

² 31 H. VIII. Bc. Trialles. 145.

³ Thomas Walsingham, fol. 97. 99. ⁴ Trin. 30. E. III. Rot. 11.

⁵ Hill. 17. E. II. Rot. 87. dorso coram rege. & Rot. rom. m. 6.

praedicti. recogniti. mandatum est constabulario turris praedicti. vel ejus locum tenenti quod corpus ejusdem episcopi. habeant, vel alter eorum habeat coram praefatis justiciariis apud turrin praedictam die Mercurii extunc proximi. sequenti. ad respondendum domino regi de proditionibus. &c. And the precept est vicecom. London, quod tunc venire faciat coram praefatis justiciariis apud turrin praedictam. tam aldermannos & cives quam alios probos homines de vicineto wardor. praedicti. i. e. Baynard's castle & Dowgate, qui praefat. episc. nulla affinitate attingunt, ad faciendum tunc ibidem deliberationem de dicto episcopo, prout moris est, secundum legem regni Angliae. Ad quem diem & locum, the bishop is brought before them, and a writ comes from the king to the said justices, reciting, that licet in statuto apud Westmon. nuper edito inter caetera continetur quod nullus archiepiscopus, nec episcopus coram justiciariis nostris occasione alicujus criminis impetatur absque speciali precepto nostro quousque aliud remedium inde foret ordinatum, de avisamento tamen concilii nostri vobis mandamus quod si aliqui archiepiscopi, vel episcopi coram vobis impetiti vel indictati existant, tunc ad deliberationem ipsorum procedatis prout de jure & secundum legem regni nostri Angliae fore videritis faciendum, statuto praedicto non obstante. Tescis meis apud Westmonast. 28 die Januarii. anno regni nostri primo. This writ being read in the court, the bishop was demanded how he would be tried. He first stands upon the privilege of the church, to whom the justices reply, that the offence was so high, that he must answer. Then with profection of saving the liberties of the church, he pleads not guilty, et inde de bono & malo ponit se super patriam, inde de bono & malo ponit se super patriam, inde fiat inde jurat. hoc instante die, &c. The jury finds him guilty, but the justices being not advised of their judgment, return him to prison. The record was afterwards removed in the kings bench, and the bishop renders himself to the prison of the marshalsea; and then being asked if he had any thing to shew, why judgment should not be given on him, he pleads his pardon, and it is allowed him.

To these precedents, a learned judge in queen Mary's time saith ¹ divers were agreeable. Among which are specially to be accounted those of the bishop of Rochester in the time of Henry VIII. and of Cranmer archbishop of Canterbury, under queen Mary, both tried by common juries. ² Neither is there any example extant from the first memory of a legal trial of a bishop which is under Edward II. that testifieth any trial by peers belonging to a bishop. And accordingly heretofore it is taken clearly by that learned judge of queen Mary's time, ³ that no ancient statute speaking of trial by peers, hath been put in ure to extend to a bishop, or abbot, although they enjoy the

name of lords of the parliament. Car ils nont (as the words are) ceul nome d'evêque ou abbe rationne nobilitatis, sed ratione officii, ne ont lieu in parlement in respect de leur nobilitie, eins in respect de leur possession, s. launcient baronies annexes a leur dignities. Et accordant a ceo, il y ad divers presidents, dont lun fuist in temps le roy Henry le VIII. Whence also it is both judiciously and modestly affirmed by a most learned man of this kingdom ^b that the spiritual lords enjoy all legal privileges, as the temporal barons do, saving only this trial by peers.

That which may be here objected out of the statute of the grand charter, whereby every man ought to be tried by his peers, id est, per judicium parium suorum, or out of the statute of 25 Ed. III. by which all treasons are to be tried by men of the same condition of which the offender is, may easily be answered. For both these ancient statutes are now to be interpreted, as it is clearly taken in continual practice, and in the books, according to the known use of the legal proceedings, and not by literal interpretation of words, as it is plainly seen in both of them. For all gentlemen, esquires, knights, bachelors or bannerets, and at this day baronets, are accounted peers, not only amongst themselves, but also to all other men of the lowest condition, ^c which yet cannot be out of the force of the word only. The like appeareth in that non amercentur comites, vel barones, nisi per pares suos, as it is shewed in the title of the amerciaments, wherein that which the statute refers to peers is done solely by judges. And this of bishops referred to those statutes is only to be judged according to use and practice, which is the best interpreter of the statutes, and not by the meer interpretation of the word peers.

And it is most likely, that if any such right had antiently belonged to them, not only they themselves, but the temporal baronage under Hen. VI. ^d protested by the mouth of viscount Beaumont for their trial by peers, when William de la Poole put himself upon the king, and not on his peers, in such sort as those bishops put themselves upon the pope, and not upon any legal trial.

But one particular case is here to be added touching this right, singled by itself, that is, trial by peers upon the third offence against the statute of service and sacraments, under queen Elizabeth. ^e For the known trial by peers is in cases of treasons or misprisions, or one of them. And trial by peers saved to the baronage in the statute of new treason or felony, hath reference only to the known use of such trial. So that in those new treasons or felonies, such as for other offences, which were before treason or felony, were to be tried by their peers, are likewise (and none else) to be tried by their peers for new treasons or felonies, and therein the spiritual lords are equally excluded. But

¹ Stam. lib. 3. fol. 153. B.

Angl. ² Mar. Dyer. 99.

parl. 18, Hen. VI. n. 52.

³ Hen. VIII. B. trial. 145.

Hollinghed. chron. f. 1749. 9. C. 117.

⁴ Ellis c. 2.

⁵ Stamf. lib. 3. pag. 151. A.

^b Camd. in Oed.

^c Rot.

this of the third offence against that statute, is neither treason, felony nor misprison, but a trespass, punished only by forfeiture of goods, and perpetual imprisonment. In which case the act saith, without reference to the use of trial by peers, as it is usually expressed in other statutes, *that all and singular lords of the parliament for the third offence shall be tried by their peers.*

C H A P. III.

Scandala magnatum.

IF any person shall divulge false tales of any of the lords of parliament, by which dissension may be betwixt the commons and them, the offender is to be imprisoned until he bring forth the author ^h. But this also is communicated to the greater officers of the kingdom.

C H A P. IV.

Process against them in English courts proceeding by bill and answer.

TH E course of the chancery and star-chamber is, that the chancellor writes to the lords of parliament, and sends out *subpana's*; and usually his letters are prayed in the bills that are exhibited against them.

But whether upon a barons not appearing on a *subpana*, an attachment may be awarded hath been a question ⁱ; neither do I find it clearly resolved otherwise, than that in later times, the practice is, that it may. But in the time of Queen Elizabeth, in a suit between *Tavernor* and the lord *Cromwel*, the defendant disobeying an injunction in the chancery, it was questioned what course should be taken against him, and upon good and deliberate advice taken by the court, having learned the opinion of some of the judges herein, an attachment was awarded to the sheriff of *Norfolk* and returned so, and the sheriff had his costs for bringing him. This attachment was awarded in *Michaelmas* term, and in *Hillary* term following he was returned so. But afterwards there being a parliament begun in *May*, and ended in *June*; the lord *Cromwel* complained of it, and it was pretended that it was gotten in court, in the absence of the lord chancellor. And advice was had with counsel, and judges, and it appeared not (as the words of the journal book are) that by the common law, or by any precedents of the said court of chancery it was warranted, that the person of any lord having place and voice in parliament (in the like case) in the said court of chancery before this time hath been attached. And therefore they took it to be against the privileges of the lords of this kingdom, and he was discharged ^k.

But for that of attachment upon *subpanas*. In the course of proceedings against noble men by such writs or bills as are used in the exchequer, chancery or elsewhere, it is not likely

that any certain course of ancient common law, or proceeding in equity, can be found to justify it at all, either against them or any other persons beyond the time of *R. II.* under whom *John Waltham*, bishop of *Salisbury*, and chancellor of *England*, brought in the writs of *subpana*, & *certis de causis*, in the chancery and the exchequer. By example whereof other courts have used them; against which the commons passed a bill in parliament under *Henry V.* but the king would not give assent to it ^l. The like is found under *Henry VI.* ^m and *Henry IV.* ⁿ.

C H A P. V.

Their number of chaplains qualified.

BY the statute of pluralities, every archbishop may have eight chaplains that may take dispensations for a plurality.

Every	{	marquess and earl	{	may	{	5	{	chap-
		viscount				4		lains
		bishop				6		
		temporal baron				3		

Every	{	dutchess	{	being	{	2.
		marbioness				
		countess		widowess		
		baroness				

C H A P. VI.

Their retaining of strangers.

A baron of the parliament may keep six strangers born out of the king's obedience at one time, whereas another man may retain not above four.

C H A P. VII.

Clergy.

UNDER *Ed. VI.* a ^o privilege was given to the nobility, that in all cases where a common person, as a clerk convict, shall and may have benefit of his clergy, and in all cases where privilege of clergy is restrained, or taken away by that statute (except in wilful murder, and poisoning of malice prepened,) that is, burglary, robbery in or near the highway, stealing of horses, and sacrilege; a lord of the parliament and peer of the realm should at the first offence only, of common grace without prayer, have benefit of the clergy, and stand as a clerk convict to make purgation, although he cannot read.

But as *Stamford* notes ^p, in all other cases, in which clergy is taken away since that act, a baron of the parliament is in the same case as any other common person is. And by acts made since, it was taken away generally. 1. For stealing of horses ^q. 2. Robbing in dwelling houses, &c. in or near the highway ^r.

3. Burning

^h 2 R. II. c. 6.

ⁱ Crompte, Juridict. 33. b. Lamb. Eiren. I. 2. c. 2.

^k Diern. Parl. 14. Eliz. & Dyer 324. 315.

^l Rot. Parl. 3. H. V. n. 46.

^m Rot. Parl. 15 H. VI. n. 25.

ⁿ Rot. Parl. 2. H. IV. n. 69.

^o 1 E. & c. 12.

^p Pleas del Coron. lib. 2. fol. 130. A.

^q 2 & 3. E. VI. c. 33.

^r 5 & 6 E. VI. c. 9.

states, not at all communicating with them in civil government, therefore foreign dignities, which are of the civil part of states, had no respect here given them, as appears in the examples already brought.

But on the other side in dignities spiritual, because there was antiently through christendom supposed an unity in the church; so that *England* with foreign nations, and they with *England*, as members of one body, had a mutual reference to each others country, was legally valued, as a bishop in *England*; As may be seen in that case ¹ of the bishop of *Utrecht*, (for this is the right name, though it be printed *Urtion*) under *E. III.* where being made bishop of *Utrecht*, makes a prebend of *England* void; So the title of cardinal was usually given in legal proceedings to such as had that dignity in *England*. Whence also the archbishop of *Raguse* being parson of a benefice in the bishoprick of *Carlisle*, under king *John*, was (it seems) to have been accounted here also an archbishop for dignity, though not for jurisdiction ².

CHAP. XI.

A knight to be returned upon every pannel where a baron is party.

IN every jury impanelled between any baron of parliament and other person whatsoever,

one knight at the least is to be returned, which failing, the array may be quashed by challenge; and testimony hereof as well for spiritual as temporal barons is frequent ³.

CHAP. XII.

No day of grace against a baron.

IF a baron of the parliament be plaintiff or defendant in any action, and the plaintiff or defendant pray a day of grace, he shall not have it against him; and this is expressly affirmed in the books ⁴.

CHAP. XIII.

Making deputies of places of trust committed to them.

OF late years it was agreed in the case of *Gilbert earl of Shrewsbury* ⁵, that whereas the office of stewardship was granted to the earl of *Rutland*, without giving power to make a deputy, (and this by queen *Elizabeth*) that yet he might exercise the same office by deputy, by reason of the necessity that is supposed in law to be of the earls attendance upon the king, and the government of the kingdom. The same reason is, it seems, for all barons.

¹ 19 E. III. trial. 57.
42. 27 H. VIII. 22.

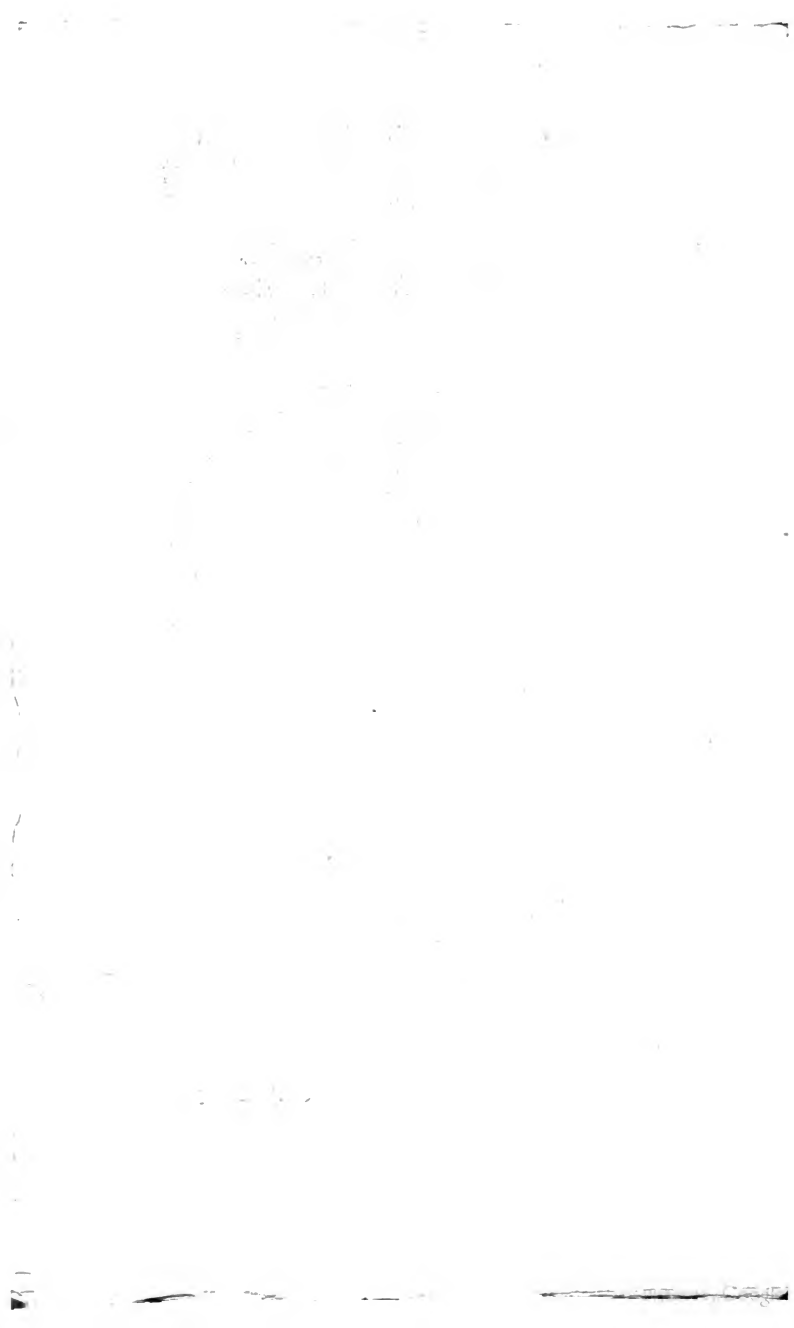
² Extra. tit. de renuntia. cap. 9. ad supplicationem.
Dyer. 107. b. 201. b. Plowd. 117. a. b.

³ 22 E. III. 9. 27. E. III. 12.

⁴ 13 E. III. Challenge. 114. Enquest.
⁵ Trin. 8 Jac. 9. Co. 49. 2.



OF THE



OF THE
JUDICATURE
IN
PARLIAMENT.

VOL. III.

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IN

PARLIAMENT.

CHAP. I.

Peers to render judgment on peers.

THE execution of all our laws hath been long since distributed by parliament out of inferior courts, in such sort as the subjects were directed where to complain, and the justice how to redress wrongs and punish offences. And this may be the reason of the judges opinion in *Thorpe's* case.^a That actions at common law are not determined in this high court of parliament. Yet complaints have ever been received in parliaments, as well of private wrongs as publick offences. And according to the quality of the person, and nature of the offence, they have been retained or referred to the common law.

Touching the quality of the person. The lords of the parliament did not antiently try any offenders how great soever the offence was, unless he were their peer. As by that of 4 *Ed. III.* where, when the king commanded the lords to give judgment on *Simon de Beresford*, and divers others also, who were not their peers, for the murder of *Ed. II.* and the destruction of the earl of *Kent*, son of *Ed. I.* a proviso and agreement was made and recorded in these words, *Et est assensu & accord', &c.* And it is assented and accorded by our lord the king, and all the grantees in full parliament, that albeit the peers, as judges of the parliament, have took upon them, and rendered the said judgment, &c. That yet the said peers who now are, or shall be in time to come, be not bound or charged to render judgments upon others than peers. Nor that the peers of the land have power to do this, but thereof ever to be discharged and acquitted. And that the aforesaid judgment rendered be not drawn to example or consequence in time to come, whereby the said peers shall do contrary to the laws of the land if the like case happen, which God forbid.^b

This proviso and agreement was made by the lords and commons, and it had these respects. *First*, to satisfy the commons, that the lords by these judgments intended not to alter the course

of the common law, and therefore they disclaimed that they had power to do this, and confessed it was contrary to the law of the land. *Secondly*, to preserve their own right, to judge none but the peers, in case of life and death. For then the king's steward is to sit in the chancellor's place, and the lords are to be triers and judges: And so by judging others than their peers, descended below their degrees, for none but peers are so to be tried and judged. It is otherwise in cases of misdemeanors; then the chancellor keeps his place, and the lords are only judges and not triers. They may command a jury to be impanelled for trial of the facts; If the truth appear not by the parties answer, the testimonies are exhibited; as 1 *Rich. II.* in the case of *Alice Peirce*.^c

Here ariseth a question, Whether the spiritual lords, *de jure*, are triable by their peers or no? Out of parliament they are not to be tried by the peers; but the doubt is, whether in time of parliament, they are to be so tried or no? To me it seems they may, if the matter be moved against them in time of parliament. For as it is in the parliament at *Tork*, 15 *Ed. II.* in the act for the repeal of the *Spencers* banishment, they are peers in parliament. Note, that the petition for the repeal saith, that the bishops are peers in parliament. The bishops name themselves peers of the land: And the chancellor to the king. And the act styles them peers of the land in parliament.

There be divers precedents also of the trial of bishops by their peers in parliament, as well for capital offences as misdemeanors, whereof they have been accused in parliament; As the archbishop of *Canterbury*, 15 *Ed. III.*^d and the bishop of *Norwich*, 7 *Rich. II.*^e for misdemeanors: So were the bishops of *Tork* and *Chichester* tried, for treason by their peers in parliament, upon the appeal of the lords appellants, 11 *Rich. II.* Anno 21 *Rich. II.* the commons accused the archbishop of *Canterbury*, of treason, and the

^a Rot. parl. 1 Hen. VI. n. 17.

^b Rot. parl. 15 Ed. III. n. 5. 43. 49. & 17 Ed. III. n. 22.

11 Rich. II. n. 8. 37.

^c Rot. parl. 4 Ed. III. n. 2. & 6.

^d Rot. parl. 1 Rich. II. n. 41. 42. 43.

^e Rot. parl. 7 Rich. II. par. 1. n. 15. 19.

^f Rot. parl.

temporal lords judged him a traitor, and banished him.^a But if the bishop be accused out of parliament, he is to be tried by an ordinary jury of freeholders; for his honour is not inheritable, as is the temporal peers out of parliament. But the spiritual lords enjoy all legal privileges, as the temporal barons do, save that only of their trial. As no day of grace to be granted against them in any suit; a knight to be returned upon the pannel where a bishop is party; and no process in a civil action to be awarded against his body, and the like. And by this it appeareth what persons are *de jure*, triable by the lords in parliament, *viz.* their peers only.

Touching the nature of the offence.

Herein the complaint and accusation, as well of the party delinquent, as offence, is to be considered. For upon the information of the king at his commandment, or upon complaint of private persons, the lords may not by the law try any but their peers for capital offences. And the lords have ever referred offences of other nature complained of by private persons to the common law, if there be remedy, unless some special cause appear fit for their own judgment. But upon complaints and accusations of the commons, the lords may proceed in judgment against the delinquent of what degree soever, and what nature soever the offence be. For where the commons complain, the lords do not assume to themselves trial at common law. Neither do the lords at the trial of a common impeachment by the commons, *decidere de jure suo*: For the commons are then in stead of a jury, and the parties answer, and examination of witnesses, are to be in their presence, or they to have copies thereof: And the judgment is not to be given but upon their demand, which is instead of a verdict. So the lords do only judge, not try the delinquent.

In the lords proceedings in judicature, is observed also a certain form, which varieth according to the nature of the complaint, and the matter complained of; so that no general rules can be given therein, though many judgments have been reversed for errors, whereof there be many precedents. And the execution upon life and death, hath been stayed at the request of the commons, the proceedings being illegal, whereof I have seen only one precedent, touching the duke of Clarence, *tempore* Ed. IV. Wherefore for our better understanding of the form of judicature, let us first consider the several causes wherein judicature belongs to the parliament, and then the ancient way of proceedings in each cause.

C H A P. II.

In what cases judicature belongs to the parliament.

Judicature belongs to the parliament in these six cases.

1. In judgments against delinquents, as well for capital crimes, as misdemeanors, wherein are to be considered,

1. *The accusation.*
2. *The parties answer.*
3. *The replication.*
4. *The proof by examination of witnesses, or otherwise.*
5. *The judgment.*
6. *The execution.*

2. In the reversing erroneous judgments in parliament, wherein are to be considered,

1. *The petition.*
2. *The bringing in the record.*
3. *The assignment of errors.*
4. *The reversal thereof.*

3. In the reversing of erroneous judgments given in the king's bench, wherein are to be considered.

1. *The petition.*
2. *The writ of error.*
3. *The bringing in the record.*
4. *The assignment of errors.*
5. *The writ of *scire facias*.*
6. *The defendant's answer.*
7. *The reversal of the judgment.*

4. In deciding of suits long depending either for difficulty or delay, wherein are to be considered.

1. *The petition.*
2. *The advice with the judges.*
3. *The determination of the lords.*

5. In hearing complaints of particular persons on petitions, wherein are to be considered,

1. *The petition.*
2. *The defendant's answer.*
3. *The proof.*
4. *The order of the lords.*

6. In setting at liberty any of their own members or servants imprisoned; and in staying the proceedings at the common law during the privilege of parliament, wherein consider,

1. *The quality of the person imprisoned.*
2. *The parties answer at whose suit he is imprisoned.*
3. *The manner of his charge.*

^a Rot. parl. at Rich. II. n. 15, 16, 17.

In certifying the elections and returns of knights and citizens for the *parliament*. But now the commons alone determine of this: Wherefore I will only shew that the commons did heretofore petition to the lords for redress herein, and what course was then taken. I leave it to the clerk of that house to shew, how the commons proceed herein at this day. Of the rest in order; and first,

Of judgments on delinquents.

§ 1. In judgments against delinquents, is first to be considered, *the accusation*. For as in the king's-bench, the justices proceed not to the arraignment of any offender without an indictment, so the lords have not proceeded to judgment, unless the crimes have first been presented to them by way of *accusation*: If otherwise, their judgments have been reputed erroneous, as that against the *Spencer's* was in 15 E. II. *rot. 2. claus. lii. penden.* For the same persons cannot be both accusers and judges.

I have observed four manner of *accusations* in *parliament*.

1. *By the commons, either by their complaints, or their impeachments.*
2. *By information ex parte dom. regis.*
3. *By complaint of private persons.*
4. *By appeal of some of the lords in parliament, which was abolished, p. stat. 1 H. IV. cap. 14.*

The accusation of the commons.

The manner of accusation ought to be by the commons alone, and not by the lords and them together; For so, earls, prelates, barons, and other peers of the land, and commons of the realm, did accuse *Hugh de le Spencer* 15 E. II. and one of the errors assigned for the reversal was, that the lords had no record before them of the causes contained in their award, *vid. rot. claus. 15 E. II.* in the parliament at *York*. The reasons may be, because the lords joining in the accusation with the commons, have declared their opinion of the fact, and there needs no further trial thereof. Wherefore the lords, who are only judges, may neither accuse any to themselves, nor join in the accusations with others.

The complaint of the commons is either by petition, or demand in general, or by impeachment in particular, which is their declaration against the party accused.

Precedents of their complaints by petition are,

Anno 21 E. III. n. 38. The commons complain of extortion used by certain merchants,

who were farmers of the king's customs of wools, not naming the parties, for which they pray remedy, and that the said merchants may be put to their answer in this parliament, for such outrage and distress done to the people. Which petition is thus answered. Let the merchants be called into the parliament, & eient leur respons.

In eodem parl. n. 49. The commons in another petition complain: That whereas divers aids have been granted to the king for his wars, certain merchants, by confederacy between them, and in manner of usury have bargained for the same, to the king's great loss, and the grievance of the commons, &c. His people pray these particulars may be examined, in presence of some, by the said commons deputed, good, wife, and loyal men during the parliament.

The answer.

The king will assign some of the sages of his council to hear, and determine the things contained in this article. And if any of the commons can inform the king, for his profit of any of the points herein contained, let him put it down in certain, and he shall be heard, to the end that right and reason may be done. And the justices which shall be assigned to enquire of false money, shall have power to enquire of the excess of such ministers.

Though these complaints were general, yet they pointed so directly to the parties accused, that *John de Worfenham*, and *Walter de Chairton*, did exhibit their petitions also in their own defence, desiring to come to their answers. What further proceedings were herein, is not recorded.

The commons were directed to impeach the parties whom they accused; *If any of the commons can inform, &c. let him inform in certain, and he shall be heard, &c.* So that although the commons accusation by complaint be general, yet if the complaint be received, and the parties brought to answer, the commons may then impeach the said parties, *viz.* declare against them in special; and then the suit is theirs, *prout anno 50 E. III. against Lyons, Ellis, the lord Latimer, the lord Nevil, Peach, and others.* But if the commons do only accuse by any way of complaint whatsoever, and do not declare in special against the party accused, then the suit is the king's, and the party is to be arraigned, or otherwise proceeded against by commandment, *ex parte dom. regis, prout Gomeniz, Weston, and Alice Peirce. 1 R. II.*

Anno 1 H. IV. The commons pray the lords appellants in the 21 R. II. may be put to their answer, and so they were.^b

Anno 29 H. VI. The commons pray that the duke of *Somerfet*, the duchess of *Suffolk*, the bishop of *Chester*, and many others may be abandoned from the king's presence during their lives, and not come within twelve miles of the court, for that the people speak evil of them.

^b Placit. coron. in parl. 1 H. IV. n. 1, 2, 3, &c.

Answer.

The king of his own mere motion is contented that all shall depart, unless they be lords, and a few of them, whom he may not spare from his presence, and so to continue one year, to see if any man can misprove them. *n. 16. inter petitiones communium.* For this was no accusation, for the commons did not require they might be banished the court.

Anno 38 H. VI. The commons among their petitions accuse the lord *Stanley* of sundry particulars, as to be of confederacy with the duke of *Tork*, and pray he may be committed to prison.

Answer.

The king will be advised¹.

Primo Jac. 26 Maii. The commons by message accuse the bishop of *London*, for words spoken of them in the upper house.

Of the other kind of complaint by way of demand, I have seen these two precedents only.

Anno 1 R. II. The subsidy to be treated upon between the lords and commons, as the manner then was; The commons delivered to the lords a schedule of their demands to be dispatched before treaty should proceed. Amongst which one was, that all such who without cause have lost or given up any castle, town, or fortress, to the dishonour of the king, and damage of the people, may be put to their answer before the lords and commons in this present parliament.

The complaint herein is general, they accuse such as had delivered up castles, &c. if it be an accusation; but they name not the parties, yet two delinquents herupon who were imprisoned in the tower, for delivery of castles, &c. were put to their answer, *viz. Gomeniz and Weston.*

Anno 7 R. II. The commons grant a subsidy, according to the tenor of a schedule indented delivered in parliament, requiring it may be enrolled in the parliament roll *verbatim*; in which schedule is this protestation, That it is not their meaning to grant the said subsidy, without the conditions ensuing.

Imprimis, That the clergy make the like grant.

Item, That the bishop of *Norwich*, and others, be compelled to answer such sums, as they have received for service by them undertaken, and not performed, &c.²

Here the commons name one of the parties, against whom they complain, but they impeach him not; and yet he, and divers others, were censured on that general demand.

Of the impeachments of the commons, there be these precedents: *Anno 50 E. III.* The commons having granted the subsidy, they protested their good will, and firm purpose, to aid the king; and said, that it seemed to them for

truth, that if the king had always about him loyal subjects, good counsellors, and faithful officers, he had been rich in treasure, and needed not have charged his commons with subsidies, &c. Then they desired that three things might be enquired of. 1. The withdrawing the staple from *Calais*, by the council and procurement of some privy counsellors about the king. 2. Of loans to the king by way of usury, receiving again greater sums than they disbursed, wherein some privy counsellors have been partners. 3. Of buying the king's debts by way of bargain, some for the 12th penny, some for the 20th, or 100th penny, and procuring the king to pay the entire debt; to the king's loss, and profit of some privy counsellors, and others of their covin. Of which three articles, and their dependencies, the commons said, They would make farther declaration in special, whensoever it shall please the king to hear them³. Then follow their particular impeachments and accusations.

First, Richard Lyons, merchant of *London*, is impeached and accused by the commons of many deceits, extortions, and many other ill deeds by him done to our lord the king, and his people, as well during the time he was retaining to the king's house, and to the king's council, as otherwise, whilst he was farmer of the subsidy and customs of the king. And in special of this, that the said *Richard*, by covin made between him, and some of the privy council of our lord the king, for their private profit and advantage, hath procured many patents, and writs of licence, to transport great quantities of wools, and wool-fells, and other merchandize beyond the seas, to other places than the staple at *Calais*, contrary to the ordinances, &c. And so they declare of many other villanies in great deceit of the king, and of his court. Wherunto the said *Richard* being then present in parliament, said, &c.

Then follows his answer in particular to what was particularly alledged against him, and in general to what was generally charged upon him.

The lords reassured him for that which was particularly objected against him, and granted commissions to enquire of the extortions wherewith he was charged in general⁴.

Then the commons in like manner accused and impeached *William lord Latimer* of divers extortions, grievances, deceits, and ill deeds, *viz.* of divers oppressions, when he served the king in *Bretagne*, for being partner with *Richard Lyons*, &c. and for loss of towns and forts beyond the seas⁵.

Item, William Ellis of *Great Tarmouth*, was impeached in this present parliament in divers manners. *First*, by surmise of the commons, &c. And afterwards *John Botheil*, and *William Cooper*, exhibited their two bills in form which followeth: To their thrice redoubted lord the king, and to the said council

¹ Rot. parl. 38 H. VI. n. 38.
17, 18, &c.

² Ibid n. 27, 22. &c.

³ Rot. parl. 7 R. II, par. 1. n. 13.

⁴ Rot. parl. 40 E. 3. n. 15, 16.

⁵ Ibid. n.

Shearn, &c. complaining of the oppressions of the said *William Ellis*, unto them, and others, &c. and their oath was taken against him *.

Item, *John Peach* of *London*, merchant, was accused and impeached by the said commons, that he, by the assent and aid of *Richard Lyons*, and of other privy counsellors, for their private profit and advantage, have purchased a patent under the great seal of our lord the king, containing that none shall sell sweet wines within the franchises of the city of *London*, but only the said *John* ?.

Item, the lord *John Nevil* was likewise impeached, &c. for buying the king's debts, &c. and for loss of towns beyond the seas ?.

Here I observe, that though the commons complained, 50 E. III. but of three grievances, viz. of the withdrawing the staple from *Calais*; of loans to the king upon excessive usury; and of buying the king's debts; yet when they who were accused appeared, they declared against them for other matters also: As against *Lyons*, for new impositions upon wools, without assent in parliament; and against the lord *Latimer*, for his misgovernment beyond the seas, and loss of forts there; and against *Peach*, for a monopoly of sweet wines, &c.

I observe also, that their declaration is not made according to the strict forms of law, as you may perceive by that against *Lyons*, wherein so many extortions are so generally set down against him, that he made no answer to them, neither could, &c. Which impeachment the lords notwithstanding did not reject, but supplied the defects thereof, by granting commissions to enquire thereof ?.

Item, In this parliament of 50 E. III. an ordinance was made against women's pursuing busineses in the king's court, and especially against *Alice Peirce* ? . I find no accusation against *Alice Peirce*; I only conjecture that the commons complained of her, though it be not entered, for she is in the number of them whom in the next parliament of 51 E. III. numb. 87. the speaker of the commons names to be unjustly convicted in this parliament: And none were there convicted, but those whom the commons complained of.

Item, *Adam de Bury*, citizen of *London*, was impeached by the clamour of the commons in this parliament of many deceits, and other things done to the king, and to his people, whilst he was mayor of *Calais*, and captain of *Bellingham*, and other ways, as more at large appears in one great bill, delivered in parliament the last day of this parliament at *Eltham*. And thereupon the said *Adam* was sent for to come to answer in parliament, and he came not, neither could be found. Wherefore it was awarded, that all his goods and chattels should be put in arrest; and so it was done by writs sent to the sheriffs of *London* and

Kent: ' And the said bill is on file with the special petitions of parliament, 50 Ed. III.

Out of this last precedent, concerning *Adam de Bury*, I observe two things: 1. Whom they complained of: The lords sent for him only to appear before them; they sent not to apprehend him as a delinquent, until he contemned their demand, whereof more hereafter in the title of the parties answer. 2. That the commons delivered not their impeachment (that is, their declaration) against the party accused, until he appeared before the lords, and then they kept it until the last day of the parliament, in hope that he would be brought before the lords; and when they saw he could not be found, they then delivered their impeachment against him, to the end (as I conceive) the particulars of their accusation might remain upon record against him hereafter.

Here I also observe an error of the clerk, that he hath omitted the proceedings against *Alice Peirce*, *John de Leicester*, and *Walter Spooner*, who were all convicted in this parliament, as appeareth by the speaker's motion to the king for their pardons in the next parliament, 51 Ed. III. numb. 87.

Thus much touching the commons accusations and impeachments.

The next precedent is in 10 Rich. II. * in which parliament, the whole commons with one assent assembled, came before the king, prelates, and lords, in the parliament chamber, complaining grievously of *Michael de la Poole*, earl of *Suffolk*, chancellor of *England*, there present, accusing him openly by word of mouth. First, That whereas he being chancellor, was bound by oath to further the king's profit and commodity in all things: He notwithstanding contrary to the said oath, and not regarding the king's great necessity, had purchased of the king lands and tenements to a great value, procuring the same, by reason of his office, to be surveyed at an under value.

Item, Whereas at the last parliament, nine lords were appointed to see and examine the state of the king and realm; which being done, and their advice delivered to the king, as well by word as writing, by what means the same might best be remedied: The chancellor promised in open parliament, that the same should be put in execution, which was not done, through his default, he being a principal officer.

Item, Whereas the subsidy, granted the last parliament, was appointed by the assent of the king and lords, in what sort it should be expended, and not other ways employed; in this was his default, he being principal officer.

Item, Whereas *John Tidman* had a certain annuity from Ed. III. which he had since forfeited, and the payment thereof was discontinued for the space of twenty or thirty years:

* Ibid. n. 31. 32.

† Ibid. n. 33.

‡ Ibid. n. 34.

§ Ibid. n. 20.

¶ Ibid. n. 35.

‡ Ibid. n. 37.

* Rot. parl. 10 R. II. n. 6, 7, 8.

The said chancellor knowing this, purchased his interest, and procured the king to confirm the same unto him, &c.

Item, That whereas the great master of St. *Anthony* being a schismatick, had thereby forfeited to the king all his revenue within this realm, the same chancellor had taken the same to farm of the king for twenty marks. And whereas the master should have livery thereof again, he could in no wise get the same, until he had bound himself to pay 100 *l.* yearly to the chancellor and his son.

Item, That during the time of his chancellorship, there had passed divers charters of pardon, as well for murders, treasons, and felonies, as also for razing of rolls, and imbezelling of laws and records; and especially since the beginning of this parliament, a charter of franchises was granted to the castle of *Dover*, to the disinheritation of the crown, and to the subversion of all the places and courts of the king and his laws.

Item, That at the last parliament, divers sums were allotted for the defence of the town of *Ghent*, notwithstanding, the same money was lost, &c. by his default, &c.

Of all which articles, the commons demand judgment of the parliament, &c.

I have been long upon this, considering all the precedents follow at large. These are the most formally set down of all the accusations hitherto of the commons, yet most of these are very general and uncertain: Howbeit the chancellor took no exceptions to the insufficiency thereof, but answered to every particular.

The next accusation of the commons is in the 21 *Rich. II.* They accused divers of those whom the lords had first appealed; whereof, when we speak of *appeals*. Anno 21 *Rich. II.* the commons accused and impeached of treason the archbishop of *Canterbury*, and demanded judgment against him, and had it.²

Eodem parl. The commons accused and impeached of treason, Sir *Thomas Mortimer*, and *John de Cobham*, a baron of parliament, and had judgment against them both.³

Anno 28 *Hen. VI.* *William de la Poole*, earl marshal, and duke of *Suffolk*, was accused and impeached by the commons in manner following, *viz.* The duke being the great favourite of the king and queen, the common people laid all the fault of the evil government on him, and made ballads thereof, (which I have seen) taxing his loyalty to the king.

The parliament of 28 *Hen. VI.* begun the 6th of *November*, and held to the 17th of *December*, and was then prorogued to the 22d of *January*.

The duke of *Suffolk*, whether provoked by the ballads then made on him, or by some speech in the house of commons, whereof nothing is recorded, did require of the king that he might be specially accused, and be heard to answer, for that many reported him to be an untrue man; and he made a solemn protestation of his

loyalty, wherein he shewed, That his father, and three of his brethren, died in the service of the king, and of his father and grandfather. That he himself had served thirty four years in the wars, being then but a knight. That he had been taken prisoner, and paid 20000 marks for his ransom. That he had been thirty years of the order of the garter; counsellor to the king fifteen years; and had been seventeen years in the king's wars, without returning home. And he prayed God so to pardon him, as he had been true to the king; and required his purgation.⁴

Whether this was sent to the commons, or what notice they had of it, appears not; but on the 26th of *January*, the commons required the duke might be committed to ward for his own confession, for that, as I conceive, he himself confessed, that the general same went of him: And the lords, on consultation of the justices, thought the same to be no good cause of commitment, unless some special matters were objected against him.⁵

On the 28th of *January*, the speaker declared to the lords, how the duke of *Suffolk*, as it was said, had sold this realm to the *French*, who prepared to come hither. And that the said duke, for his own defence, had furnished *Wallingford* castle with all warlike munition. And then on request, the duke was committed to the tower.⁶

On the 7th of *February*, the chancellor, and some other lords, were sent by the king to the commons, a thing not usual; But wherefore they were sent is not expressed, haply to be informed what they could say against the duke, or to reconcile the business. But the commons delivered to this chancellor, and those other lords, a bill of articles against the duke, wherein they accused him of divers treasons, *viz.* For intending to marry his son to the heir of the duke of *Somerset*, and thereby for want of issue of the king, to claim the crown. For practising with the *French*, &c. And they require prosecution against him.⁷

March the 9th, The commons delivered another bill of less offences against him, requiring those articles also to be enrolled, and the duke put to his answer.⁸

These before-recited, are all the antient precedents I find recorded; the following are of later times.

Anno 19 *Jac.* The commons accused and impeached by word of mouth, Sir *Giles Mompesson*, and Sir *Francis Michell*, knights; for many oppressions done to the people: They impeached them to the lords at a conference, and afterwards delivered their declaration against them.

First, Concerning a patent for inns and osteries.

Secondly, A monopoly for gold and silver thread.

Thirdly, Concerning a patent of concealments.

² Rot. parl. 21 *Rich. II.* par. 1. n. 14. 16.

³ Ibid. n. 16.

⁴ Ibid. n. 17.

⁵ Ibid. n. 19. & par. 2. n. 14. 16. 17.

⁶ Ibid. n. 18. to 27.

⁷ Rot. parl. 28 *Hen. VI.* n. 14. 15.

⁸ Ibid. n. 25. to 47.

Eodem parl. They accused *Francis* lord viscount *St. Albans*, at a conference, of bribery, and corruption, in his office of chancellor. They delivered no writing, but a committee of the lords having considered the proofs, and drawn up the particulars in form of a charge, they were sent to the lord chancellor, and his answer required to each particular.

In the same manner, in the same parliament, they accused *John Bennet*, judge of the *prerogative court*, of bribery and corruption in his office.

21 *Jac.* In the same manner they accused and impeached *Lionel* earl of *Middlesex*, and lord treasurer of *England*, of bribery and extortion, and impositions on *French* wines and grocery, which being reported to the house, a committee was appointed to consider of the commons' plaint, and also of a committee, who had reported to the house a great want of powder in the stores, through the lord treasurer's negligence.

A committee appointed to consider thereof, did, after many examinations taken, draw up, out of the whole complaint of the commons, a charge against him; as also out of the report of the committee for munition touching the want of powder; and of a complaint made to the house by *Sir Thomas Dallison*, and of some misdemeanors whereof they are informed in the great wardrobe, and court of wards: Which charge the house sent unto the treasurer, and required his answer.

In eodem parl. 21 *Jac.* The commons, at a conference, accused and impeached by word of mouth the bishop of *Norwich*, of some misdemeanors, which being reported to the house, the said bishop made a present answer thereunto as it was.

In the parliament 1 *Car.* 1. 8 *Maii.* The commons, at a conference, accused and impeached *George* duke of *Buckingham*, of many misdemeanors, and delivered their declaration in writing, that the said duke might be put to his answer.

§. 2. *The second manner of accusation is ex parte domini regis, which is threefold.*

The two first are immediately from the king, and the third from the commandment of the lords, by a formal information exhibited in parliament by the king's attorney, or counsel learned, as was that of 4 *Ed.* III. against *Roger Mortimer* earl of *March*, and divers others; and 4 *Rich.* II. against *Sir Ralph Ferrers*, knight; and 1 *Car.* I. against the earl of *Bristol*.

By the king's commandment, either upon the petition of the delinquent, and upon the return and view of any the proceedings taken elsewhere; as against the earl of *Northumberland*, and lord *Bardolph*, upon former proceedings against them in the court of *Chancery*. And 2 *Hen.* VI. upon request of the commons against *Sir John Mortimer*, knight, indicted in *London*. In these cases no articles are exhibited *ex parte domini regis*, as in the former.

By articles exhibited *ex parte domini regis*,

ex parte dominorum, against such as the complaint is made upon in general by the commons, *prout* 1 *Rich.* II. against *Gomeniz*, *W'elton*, and *Alice Pierce*; 7 *Rich.* II. against the bishop of *Norwich*, and divers others. Which articles, though drawn and exhibited *per mandatum dominorum*, yet were the parties charged therewith *ex parte domini regis*.

Of accusation by information ex parte domini regis.

In *rot. claus.* 4 *Ed.* III. There is a proclamation of the death of *Edmund* earl of *Kent*; where it is said, certain letters of his containing treason, were shewed to the king; wherefore he was arrested, and freely acknowledged the same before the earls, barons, and other grantees and nobles of the realm, in the parliament at *Winchester*, 4 *Ed.* III.

Here appears plainly, that articles of treason are exhibited in parliament against the earl of *Kent*.

In the next parliament in the same year, *Edmund*, son and heir of the said *Edmund*, exhibited his petition, praying the king, that the record and process whereupon the said earl was put to death, might be brought before him in parliament, and if errors be found, that right be done. The which being read before the king, prelates, earls, barons, and other grantees, in the said parliament, the king, by his royal power and dignity, by assent in parliament, repealed the said judgment. *

Note. That in this repeal, no error was alleged, nor any exceptions taken for this, that the lords proceeded upon the articles only, which were objected against him the said earl.

This is out of the close roll.

The first precedents recorded in our parliament rolls of accusations in this kind, are these of 4 *Ed.* III. in the parliament at *Westminster*, which are added at large amongst divers others, at the end of this discourse, the effect whereof doth follow, *viz.* These are the treasons, felonies, and ill deeds done to our lord the king, and to his people, by *Roger de Mortimer*, and others of his covin, reciting them all, and concluding thus: Whereas our lord the king doth charge you the earls, barons, and other peers of this realm, that forasmuch as these things touch him principally, and you, and all the people of this realm, that you do unto the said *Roger* right and lawful judgment, as is fit for such an one to have who is very guilty of all the crimes above written, for that he believed the said things are notorious, and known for truth unto you, and to all the people of the realm. Then followeth the judgment against him. †

Item. In the said manner our lord the king charged the said earls, barons, and peers, to give right and lawful judgment on *Simon de Bereford* knight, who was aiding and counselling unto the said *Roger de Mortimer*, in all treasons and ill deeds, for which the said *Roger* was so awarded, and done to death, as the thing that is known, and notorious to the said peers,

* *Rot. parl.* 4 *E. III.* no. 11, 12.

† *Rot. parl.* 4 *E. III.* no. 1.

as the king believeth. Then followeth the judgment against him also.†

Then followeth the judgment against *John Mantravers, Thomas de Garney, and William de Ogle*. * But no particular accusations are recorded against any of them, unless they were comprised in those general words of that against *Mortimer, viz. And other of his covin*. For some of the same crimes are mentioned in the judgments, yet no doubt but the king's attorney did exhibit articles against every of them, upon which the lords proceeded to judgment.

Here I do ingenuously confess my own error, when I said that this judgment against *Roger de Mortimer* was afterwards reversed, for that he was put to death without any accusation, which I conceived to be so upon first view of the repeal thereof, where the petitioner *Roger de Mortimer*, the grandchild, assigneth for that the said earl was put to death, and he disinherited: *Sans accusation, & sans estre mesne in judgment ou en respons.* †

By which words, (*sans accusation*) I gave you to understand, that the articles were no accusation; whereas now upon better consideration I do find that these words do intend no accusation by witnesses, or otherwise, to prove the said articles objected against him. For these articles are a legal accusation in parliament, and frequently used, as appears by many precedents of the like nature. But there was no other proof offered by the lords to prove the same, than that the king believeth them, and that they are notorious and known for truth unto the lords, and all the people of the realm.

And the lords also having examined these articles, said all these things contained therein, are notorious and known. They speak not a word of any one witness examined, or any other proof than the common fame: For this cause, and for that the said earl was not brought to judgment, nor to answer, but condemned unseen and unheard, upon common fame only, without any legal proof, the whole parliament did very justly repeal the said judgment and record, declaring it to be erroneous and defective in all points. And the lords were willing to damn the whole record in all points, least haply it might be alleged against themselves another time for precedent.

Anno 15 Ed. II. The lords and commons joined in the accusations against the *Spencers*, and for that the lords had no record in their own pursuit upon the cause contained in their award, and they ought not to be their own judges, &c. having been accusers, no exceptions were taken to the articles, but other errors assigned, *quod vide*, where it is said to be *sans accusation*; so that they repealed it, not for that there was no accusation, but for that he was not brought to his answer.

Again, That those words, *sans accusation*, should simply signify no accusation, is only the averment of the petition. The judgment doth

not say, that there was no accusation, but that it was erroneous in all points. And so it was, no proof being produced, but common fame, to prove the answer. And this first error bred a second. I do not well understand the meaning of these words, *sans accusation*. That a peer ought to be indicted for capital offences in parliament. But having perused all the judgments, I do not find any one peer indicted in parliament. In 11 *Rich. II. numb. 7.* All the lords spiritual and temporal claimed, as their liberty and franchise, that the great matters moved in this parliament, and to be moved in other parliaments in time to come, touching the peers of the land, ought to be adjudged, adjudged, and discussed, by the course of the parliament, and not by the civil law, nor by the law of the land, used in the more base courts of the realm; which the king granted in full parliament.

This is said to be their ancient custom, *viz.* to be adjudged according to the use of the parliament only.

Then no peer can be indicted in parliament, for that it is contrary to the use of parliament. Let this suffice for the confession and rectifying mine own former error herein.

But a lord of parliament may be indicted out of parliament, and, by the king's command, proceeded against in the next parliament, upon the same indictment as in these subsequent.

In the same parliament,† the lord *Berkley* was arraigned, for the death of *Ed. II.* and whether out of his humility or otherwise, he waived his peerage, and put himself on the trial of his country. The articles against him though not expressed, but by the inference out of his arraignment, are for the murder of king *Ed. II.* at *Berkley* castle in the county of *Glocester*, unto which he answered, that he was then sick at *Bradley* in *Worcestershire*, and pleaded not guilty of the death of the said king, *Et de hoc de bono & malo ponit se super patriam*: The precedent shall hereafter be added at large.

It begins thus.

Placita coronae tenta coram dom. rege, Ed. III. post conquestum Angliae in pleno parlamento suo praedicto. Et allocutus de hoc, quod cum dominus Edwardus nuper rex Angliae pater dom. regis nunc, in custodiam Thomae & cujusdam Johannis Mantravers extitit deliberatus, ad salvo custodiendum castro ipsius Thomae de Berkley in com. Glocestre, & in eodem castro in custodia ipsorum murderatus extitit, & interfectus, qualiter se velit de morte ipsius regis acquietare: dicit, &c.

Then follows his answer.

Here the cause, why the lord *Berkley* was tried, is mentioned, but the articles objected against him, and by whom he was accused, who questioned him, whether the chancellor or steward of *England*, or who else; all these

† Rot. parl. 4 E. III. n. 21

* Ibid. n. 32, 4, 5.

† Rot. parl. 15 Ed. III. n. 11.

† Rot. parl. 4 E. III. n. 16, 17.

circumstances are omitted. It appears not, I say, in what manner this crime of the lord *Berkley* was presented to the lords, whether by the former general information against *Mortimer*, & autres de la couron, or by some such particular information against him alone, which I rather believe.

Some such information there must be of necessity, else how could he be questioned for his crime in parliament? But here it appeareth that the lords brought him to his answer, which they omitted to *Mortimer*, and in that point their proceedings against *Mortimer* were erroneous. And had his manner of accusation been erroneous also, no doubt but the lords would have avoided that error now against *Berkley*.

The manner how *Berkley* was arraigned here, in pleno parlamento, is explained in the precedent of, 1 *Rich. II. Gomeniz and Weston*, who were brought prisoners by the constable of the tower, before the lords in full parliament sitting in the white chamber, where they were arraigned at the commandment of the said lords in full parliament, by Sir *Richard le Scroop*, knight, steward of the king's house. The words full parliament signify the lords and commons. For that record saith, the commons prayed, that all such that have surrendered any forts, &c. might be put to their answer before the lords and commons, &c. Whereupon they were brought to their answers in full parliament for that offence. So here I conceive the lord *Berkley* being accused by the king, for the murder of king *Ed. II.* was brought before the lords and commons: For the commons are to be present at such arraignment, as shall be shewn hereafter, and the clerk of the crown having read the accusation against him, *allocutus fuit*: that is, the lord steward of *England* recited the fact, whereof he was accused, and demanded of him, how he could acquit himself.

This I conceive to be the manner thereof. *Vide* the appeals 21 *Rich. II.* for the form thereof.

I marvel the lords permitted the lord *Berkley* to waive his peerage, and put himself *super patriam*.

Anno 4 *Rich. II.* Sir *Ra. Ferrers* knight, was brought into parliament under the guard of the marshal of *England*, and there arraigned on the king's behalf, for suspicion of treason. In the process against him is recorded, that for suspicion of treason furnished against him, he was arrested in the marches of *Scotland*, by monsieur de *Lancaster*, and other lords temporal there being in the said marches, and that he was brought under the said arrest by commandment of the lords to answer in this parliament, to that which shall be furnished against him, in special concerning certain letters, which were found and sent to the king and his council. ^a The letters were also recorded, and read in parliament, but the information exhibited against him, whereupon he was arraigned is not recorded. It

is only said, he was arraigned, *ex parte domini regis*.

Here might be two questions.

First, Whether was this Sir *Ra. Ferrers* legally brought to his answer in parliament by the commandment of the duke of *Lancaster*, and those other lords who were then with him in the marches of *Scotland*?

Secondly, Whether he being no baron, or lord of parliament, (for he never had summons) might be legally arraigned in parliament for life and death, upon an information, *ex parte dom. regis*, which is contrary to the law, as was resolved in parliament, 4 *Ed. III. numb. 6*?

For resolutions of these doubts, I am of opinion that the duke of *Lancaster* might send Sir *Ralph Ferrers* to the parliament, because it was then sitting, and might examine the treason whereof he was suspected, though they could not proceed to judgment against him, without the commons, he being a commoner, and not their peer: And it fell out in the examination of this business, they found the letters to be counterfeited, and so he was acquitted thereof: and so far their proceeding was not illegal. For the parliament may entertain and examine any cause, and then direct the judgment thereof to its own proper court, if it belong not unto them, as they did in 5 *Rich. II. numb. 43, & 44*. Here Sir *William Cogan*, knight, being accused by *Richard Clynedon* esquire, of matter sounding to treason; After the lords had heard the cause, they remitted both the parties to the common law. And in this case of Sir *Ralph Ferrers* (if they had found he had been guilty) they might have proceeded to judgment against him, according to the precedent of Sir *John Mortimer* in 2 *Hen. VI.* who was indicted in *London*, and the indictment returned into the chancery, and thence brought into the parliament, where the commons affirmed the same, and prayed judgment against him.^b

Anno 2 *Hen. IV.* The lords temporal gave judgment on *Thomas Holland* late earl of *Kent*, *John Holland* late earl of *Huntingdon*, *John Mountague* late earl of *Salisbury*, the late lord de *Spencer*, and *Ralph Lumley*, who were beheaded in a war they had traiterously raised against the king.^c This judgment is entered, but not the information, *ex parte dom. regis*, which is necessary to be understood. For had it been omitted, *Thomas*, son to the earl of *Salisbury*, would without doubt have assigned that for one of the errors in his petition to reverse the said judgment, 2 *Hen. V. apud Leicester*. which he did not, though he assigned for an error, that his father was put to death without an accusation.^d

In the parliament begun at *Westminster*, Feb. 6. 1 *Car. I.* and continued until June 15. anno 2. *ejusdem regis*, *John earl of Bristol* was charged with high treason in this manner, viz. *Primo die Maii*, the said earl of *Bristol*

^a Rot. parl. 4 *Rich. II. n. 17, &c.*
parl. 2 *Hen. V. n. 13.*

^b Rot. parl. 2 *Hen. VI. n. 18.*

^c Rot. parl. 2 *Hen. IV. n. 20.*

^d Rot.

being

being brought to the bar, and kneeling till the lord keeper wished him to stand up; the lord keeper told him, he was sent for to hear his charge of high treason. And Mr. attorney general being at the clerks table, began to open his charge, but being interrupted by the said earl, who with much importunity exhibited articles against the duke of *Buckingham* then present, which, as he said, he conceived to be treason, and required of the lords that his testimony against the duke, and the lord *Conway*, against whom he then also delivered articles, might not be made invalid, by the king's charge against himself, which he affirmed was procured by the said duke. Yet notwithstanding, the heads of the king's charge were opened against him by Mr. attorney, and then the said articles against the said duke, and against the lord *Conway* were read. And it was ordered by the lords of the parliament, that the king's charge against the said earl, should be first heard, and afterwards the earl's charge against the duke, &c. But yet so, as the earl's testimony against the said duke be not prevented, prejudiced, hindered, or impeached.

Secundo die Maii. The house was moved that the earl of *Bristol* might be indicted according to the stat. of 35 H. VIII. the treasons committed being beyond the seas, as was objected, and that being certified to both houses, they to proceed against him by trial of peers. But their lordships did not resolve on the manner of proceeding. Then the house was moved that Mr. attorney might provide an indictment against the said earl, to be returned to the house on *Saturday* next, *Maii* 6. And if he doubt of the form, to confer thereof with the judges. And if any great difficulty appear, to resort to their lordships and acquaint them with it. And it was ordered that Mr. attorney proceed with the preparation, but the house not to be concluded, at their next meeting on *Thursday*. And the sub-committee for privileges, &c. to search for precedents in the mean time.

Die Jovis Maii 4. The sub-committee for privileges reported one only precedent, viz. the trial of the earl of *Northumberland*, 5 H. IV. which the clerk read unto them out of the parliament roll of that year. Whereupon after long debate, it was ordered,

First, That Mr. attorney prepare the heads of the charge, against the earl of *Bristol*, and bring them in on *Saturday* next.

Secondly, The earl then to receive his charge at the bar.

Thirdly, That when the earl hath heard his charge, the lords will determine when he shall answer; but he is not to be inhibited if he will answer presently.

Fourthly, The cause of the earl of *Bristol* is to be retained wholly in this house.

Fifthly, After the earl's charge is brought in, and his answer, then their lordships to proceed to hear Mr. attorney's proofs among themselves, and then to put the cause into a way of proceeding in this house.

Die Sabbati Maii 6. The lord keeper shewed how Mr. attorney desired, that in regard the house hath already heard the nature of the crimes objected against the said earl of *Bristol*, that the clerk of the crown in the king's bench, may attend the reading of the charge here according to a precedent of former times; which was denied, in regard the clerk of the crown in the king's bench, is no minister of this court, and also for that it was ordered *May* 4. that this cause was wholly to be retained within this house. The said order being read, the earl was brought to the bar, and the lord keeper commanded Mr. attorney to read the charge against him, who read the same out of a parchment ingrossed in court-hand, and signed by himself, *Ro. Hearb.* It containeth divers articles of high treason, and other great enormities, crimes, offences, and contempts, committed by the said earl, &c. *prout posita.*

Thus much touching the charge against the said earl by information in the king's behalf.

A question was demanded of me and others in private, the last parliament: That seeing by order of the lord's house, *May* 4. the earl of *Bristol*'s cause should be wholly retained in this house, how that might now be done in respect of the statute of 35 H. VIII. by which it was enacted, That all treasons committed beyond the seas, as this earl's were, shall be tried in the king's bench, or before commissioners assigned by the king; and an order of the upper house cannot avoid the statute. Some were of opinion, that the earl was first to be indicted before commissioners appointed by the king, and that indictment being returned into the parliament, to be tried thereon by his peers, and vouched that precedent of 2 H. VI. of Sir *John Mortimer*'s indictment returned into the parliament.

But then the cause cannot be wholly retained in the parliament, neither can it be inferred out of the precedent of Sir *John Mortimer*, that the parliament can try any of treason unless he be indicted elsewhere. For then the parliament should not have so much power, as hath the king's bench and other inferior courts, wherein capital offences may be both enquired of and determined. Neither can Sir *John Mortimer*'s indictment thus returned be a leading case, for trial of peers in parliament, for he was but a commoner, and therefore not to have been judged by the lords, unless they had first accused him, and the commons did so by affirming the indictment to be true, before the lords gave judgment upon him. But there can be no precedent shewn, that a peer of parliament hath been tried in parliament on an indictment taken elsewhere.

To resolve this question, two things are considerable.

First, The statute of 35 H. VIII. Whether the meaning thereof were to limit the trial of a peer in the time of the parliament (for foreign treasons assigned) in the king's bench, or before commissioners assigned by the king, and not elsewhere?

elsewhere? But I conceive the statute hath no such meaning. The preamble saith, it was doubted whether such treasons might by the common law of the land be enquired into, heard, and determined within this realm of England. For a plain remedy, order, and declaration herein to be had and made, be it enacted, &c. So that if such treasons have not been heretofore inquirable by the common law, then this statute provides a remedy and order for the same hereafter. But this statute doth not abridge the parliament of the power it had to enquire of, and determine such treasons in time of parliament. Whereof there are divers precedents, viz. 1 R. II. *Weflon and Gomeniz*, 50 E. III. *William Latimer*, and *John Nevil*, 7 R. II. the bishop of *Norwich*, & *ibid.* 17. *Crefingham* and *Shipworth*, & *ibid.* numb. 24. *Sir William Elfingham*, *Sir Thomas Trever*, and *Sir Henry de Ferrers*, all tried in parliament for matters done beyond the Seas.

The second thing to be considered is, the order itself, which I conceive to be of force, notwithstanding the statute of 35 H. VIII. tor that it is neither directly contrary to the statute, nor repugnant to the common law, otherwise the act of one house alone cannot alter a former statute made by consent of both houses. And this is to be remembered, that the proceeding against a peer in parliament is not necessary. But thus it was used to be, viz. The peer accused to be brought before the lords and commons, and then the lord steward to sit in the chancellor's place, on the woolfack, and the articles to be read against him by the clerk of the crown; and upon his answer the lords to determine of their judgment, which is afterwards pronounced by the same lord steward.

A question might be, whether the commons have used to sit with their speaker at these trials? If they have, then the court of requests, or some such place, may be provided for the purpose. And thus that whole cause might be retained in parliament, notwithstanding the statute of 35 Henry VIII. Thus much touching the accusation, *ex parte dom. regis*, exhibited in a formal accusation by the king's attorney.

The duke of *Clarence* was arraigned in parliament, 18 E. IV. upon the like information; but the precedent is not in the parliament rolls, therefore I omit it.

S. 4. The second kind of accusation on the king's behalf is, ex mandato dom. regis, upon the roll and view of any proceedings elsewhere against the delinquent, or upon his petition: The precedents thereof are these.

Anno 5 Hen. IV. The earl of *Northumberland* was tried in parliament, *ex mandato dom. regis*, upon his own petition. The accusation and manner was thus: The said earl had

raised forces to have joined with his son *Hotspur* in rebellion against the king: *Hotspur* was slain in the battle of *Shrewsbury*, 21 July, 4 Henry IV. before the said earl could join with him. Whereupon he dismissed his forces, and retired to *Workworth* castle. The king after the battle came to *Tork*, and sent for the said earl, and being come, pardoned him for his life, but abridged him of his liberty. The next parliament was summoned the 20th of *October*, to begin at *Coventry* the 3d of *December*; and the earl had his writ of summons. This parliament was prorogued till the 23d of *November* by new writs (as the manner then was) returnable *crastino Hillarii* then following, but the earl had no new summons thither; but thither he comes a petitioner. Speed saith, he was abridged of his liberty, but the record saith, he came before the king, lords, and commons of parliament, and not that he was a prisoner as *Gomeniz*, and *Weflon*, 1 R. II. nor that he was caused to be brought as a delinquent, sent for as *Alice Peirce*, 1 R. II. And then the chancellor shewed, that upon *Tuesday* last past, he had been before the king, the lords, and commons in the same parliament, and there besought the king, as he had done before, at his coming before him at *Tork*, that the king would do him grace for his misprisions against him, in not keeping his laws and statutes, as by one petition delivered by him in parliament, written in *English*, the tenor whereof followeth, may appear.

To my most dreadful and sovereign liege lord.

I your humble subject beseech your highness, to have in remembrance my coming into your gracious presence at York, of my free will, by your goodly letters, &c.

The which petition, *per commandment du roy*, was examined by the justices to have their counsel and advice therein. But the lords by protestation made, claimed the judgment to belong unto them only in such cases; and so the lords tried him, and acquitted him of treason and felony, but found him guilty of a trespass only, which the king pardoned.

Here no information was exhibited against the said earl, yet the king's counsel opened his offences to the lords, else how could they appear.

Anno 7 Henry IV. The king commanded the lords temporal in parliament, to advise what manner of process should be made against *Henry* late earl of *Northumberland*, and *Thomas Bardolph* late lord baron, for certain ill deeds which they had lately committed contrary to their allegiance. At their meeting, the constable of *England* shewed them the process made in the court of *chivalry* against *Henry de Percy*, upon the articles of treason committed by him and others of his covin.

In which articles are named the archbishop of *Tork*, *Thomas Newberry* earl marshal, the said earl of *Northumberland*, the said lord *Bardolph* and many others, and their several treasons are therein contained.

The lords having advised therein, and considered the proofs, delivered their opinion to the king touching the said earl of *Northumberland*, and the said lord *Bardolph* only, and proceeded to judgment against them. Then the king caused to be demanded of the lords temporal, peers of the realm, what they would say touching the act of the said late archbishop of *Tork*, and of the said earl marshal, who lately with a great multitude of people were armed, and trained in the field within the realm of *England*, with banners displayed, &c. Unto which demand the said lords temporal said, That according to the information to them given by the said constable, it seemeth unto them to be treason; yet notwithstanding the lords desired that with good deliberation, when they next returned to the parliament, they might speak thereof unto our lord the king, as no error might be found in their doings in time to come. This was done on that day the parliament was adjourned.

Here the lords had no other accusation against those two peers, but the king's commandment, upon view of former process against them in the court of *chivalry*. And the lords declared their opinion touching the archbishop of *Tork*, and the earl marshal, (though their treasons were contained in the same process also) least error might be found in their doings hereafter. But whether they thought their error to be, that the king had not commanded them first to advise thereon, touching the said archbishop, and the earl marshal, as he had done touching the others, let the reader judge; for my part, I think that would have been error. Could the lords proceed upon process elsewhere, unless the king commands them?

2 *Henry VI.* The judgment against *John Mortimer*, is drawn up very briefly by *John Hales*, one of the justices of the king's bench, wherein he first shews, that the said *John Mortimer* was indicted in *London*, sitting the parliament, before the lord mayor of *London*, and other commissioners appointed by the king: For that the said Sir *John* being committed to the tower, for suspicion of treason, corrupted his keeper and broke prison: That the said indictment was returned into chancery, *ex mandato dom. regis*, and by the chancery brought into the parliament before the duke of *Gloucester* the king's protector, and the lords temporal, the king being then an infant. And the protector being authorized by commission to hold the parliament, *de precepto dom. regis*, that the said Sir *John Mortimer* by virtue of the writs was brought before the said duke, and lords, and commons. That the said commons affirmed the said indictment to be true, and desired judgment against him, as convict of treason and felony. And lastly, that he was thereupon adjudged.

In this is set down all the essential parts of the lords proceedings against *Mortimer*. The ceremonious or formal parts thereof are omitted, as, who complained of or accused *Mortimer* to the parliament. The king or the commons did not, for then there needed no indictment; and therefore it must move for the king either before the indictment, or rather upon the return thereof unto the house. For had the accusation been before the indictment, it had been a shorter way to arraign him also before the commissioners in *London*, (he being no member nor peer of parliament) than to return the indictment into the chancery, and then be brought into the parliament.

Here is also omitted the conference before hand, between the lords and commons touching this matter; for it is very unlikely that the lords did suddenly send for the commons, and then abruptly read the information before them, and they as suddenly affirm the same; all these are necessarily understood. That the commons affirmed the indictment, &c.

It appears that the lords cannot of themselves judge a common person for an offence, for he is no peer according to that of, 4 *Edward III. num. 6.*

The manner of accusation by information, *ex parte dom. regis*, is when the commons, as any other private person, accuse any man unto the lords in general, but do not declare the offences in particular, other than by the commandment of the king. Articles are drawn up against the delinquent, *ex parte dom. regis*.

The precedents are these.

1 *Richard II.* The constable of the tower was commanded to bring *Gomeniz and Weston* (whose offences were complained of in general by the commons that they named) before the lords in parliament, to answer to the articles objected against them on the behalf of the king, and they were severally arraigned at the commandment of the lords, &c.

Eodem anno, *Alice Pierce* being complained of by the commons, was accused, and commanded to come before the lords in parliament, to answer to certain things objected against her on the king's behalf.

And hereupon Sir *Richard le Scroope*, chief steward of the king's house by commandment of the lords, rehearsed in parliament in the presence of the said *Alice*, a certain ordinance, &c. made in the parliament of 50 *Edward III.* against her.

And this rehearsal being made, the said steward furnished unto the said *Alice*; That it seemed to the lords of the parliament that she had incurred the pain comprised in the said ordinance in certain points, and especially in two; that is to say, &c.

By these two precedents it appears plain enough, that the lords commanded the articles to be drawn, and exhibited though *ex parte dom. regis*; for all these are said to be done by their

their commandment. And the practice at this day is, that out of the complaints of the commons, as of *Mompesson*, the lord chancellor, and the lord treasurer, a committee of the lords did draw up the charges; but they wanted the words, *ex parte dom. regis*.

The reason why in this cause the articles are, *ex parte dom. regis*, seemed to be this :

The commons complain, but impeach not. Notwithstanding the impeachment the lords cannot proceed, neither can they impeach any to themselves; so it rests that the party is to be impeached at the king's suit.

It may be lawful for me to examine the proceedings of the lords in the complaint against *Mompesson*, and to compare them with ancient proceedings in like cases, and they will appear to differ much.

And touching *Mompesson*, the commons did not only complain but accuse him: He fled, in his absence they ought to have proceeded to judgment against him, before proclamation first made for him to appear before the king and them at a day. The ancient use in such cases was this.

The lords considered of the complaint, and examined the proofs produced by the commons: Then agreed on their judgment, and caused proclamation to be made throughout *England* for the party to appear at a day, else judgment shall be pronounced against him, with which the commons are to be acquainted before the proclamations are sent forth. Then the return of the proclamations to be reviewed and examined, and if any errors be therein, new proclamations are to be made in the next shire only for the party to appear at a short day: If they find no errors in the return, then judgment is to be pronounced, and not before. Thus it was in 21 *Richard II.* in *Thomas Mortimer's* case, &c. In 7 *Henry IV.* in the earl of *Northumberland's* case. But there needed no articles to be drawn up, *ex parte dom. regis*, out of the impeachment of the commons, for the suit is theirs, and not the king's.

Touching the lord treasurer. First, the commons did iwerse from the ancient course in this, they delivered not their accusation in writing, he being absent; Had it been in the open house, an impeachment by word of mouth had been sufficient, and the suit had been theirs; but it being at a committee, how could the lord treasurer take notice of their impeachment? Wherefore the lords of necessity did draw up a charge against him out of their accusation, and then it became the king's suit, and they were abridged of their power to reply, or demand judgment, *prout in Weston & Gomeniz case 1 R. II. & Alice Peirce, ibid.*

Neither was it now necessary for the commons to be acquainted with the delinquent's answer, or any of the proceedings, for that they neither demanded he might be put to his answer before the lords and them, nor impeached

them by word in open house, nor in writing, one of which is required in an impeachment.

And the lords they varied in this; that they did mingle other complaints with theft of the commons, when each should have been a-part of itself, *prout 42 Edward III.* Sir *Joh. at Lee's* case. Neither did the lords antiently use to omit any part of the commons complaint and accusation, as they did the imposition on the *French* wines: And the articles of the charge they sent to the lord treasurer, ought to have been examined *ex parte domini regis*, *prout* in the former precedents of 1 *R. II.*

The next precedent is 7 *R. II.* upon the demand of the commons against the bishop of *Norwich* and others.

§ 5. Of accusation by complaint of private persons.

I do not remember any precedent of this manner of accusation for publick offences, unless the parties complainant be particularly interested therein; yet I doubt not but such complaints have been; and may be received, and the parties proceeded against in parliament, or else that high court should not have to much authority to receive information *pro domino rege* from private persons, as the inferior courts have: But what hath been done shall appear; I will omit all complaints of particular wrongs, except it be of *bribery, extortion or oppression*, in men of authority.

Anno 42 Edward III. *William Latimer* exhibited his petition in parliament unto our lord the king, and to his council, shewing that he had the wardship and marriage of the heir of *Robert Latimer*, by meise grant from the king, and held the same until monsieur *John at Lee*, then steward of the king's house, sent a serjeant at arms to bring them to *London*, and commanded him, being come, not to depart without his leave, upon payment of 1000 *l.* and afterwards would not give him leave to depart until he had surrendered the body of the said heir, and the king's patent unto him the said monsieur *John at Lee*: And thereupon the said *John* was put to reason before the lords, &c. no. 20, 21. And also the said *John* was put to reason before them for this; when he was steward of the king's house, he caused divers to be attached by their bodies, some by serjeants at arms, and some otherwise, as *W. Latimer* and others to be brought before the king's council, &c. n. 22. And also for executing the authority of steward out of the verge. n. 23. And also for discharging out of *Newgate*, by his authority, and against the judges commandment, *Hugh Leuenham*, an *approver*,* who had appealed several men of felonies, &c. n. 24. And also, that he being sworn of the king's council, did bargain with *Nicholas Lovyn* for the manor of *Rainham* in *Kent*, which the said *Nicholas* claimed to hold during the minority of *John Staynton*, whereas the said *John at Lee* knew the same was holden of the king

* Promoter.

in chief of the castle of *Dover*, n. 25.

These be the particulars wherewith the said *John at Lee* was charged. It appeareth *W. Latimer* accused him at the first, but not the rest; and I imagine that the commons accused him of the second and other particulars, for that they are laid somewhat generally, and are offences against the liberties of the commons; and also for that divers of the commons were present at the hearing; and for the fourth and fifth particulars, I perceive the king's counsel accused him thereof, for that one is an offence against the legal proceedings of justice, which then was that of the approver, viz. *He which accuseth any one of felony, &c. should remain in prison as well as the accused until trial.* Of later times the accuser puts in furies to prosecute. And the other offence is a particular wrong done to the king in his revenues: And had any private person accused him of this, their petitions would have been recorded as well as *Latimer's*, but the lords proceeded against him upon *Latimer's* accusation, and then upon the rest severally, and they did not mingle one with another.

Anno 50 *Edward III.* the commons accused and impeached *W. Ellis*, n. 31. and afterwards *John Botild* and *W. Cooper* exhibited their bills against him, to this effect;

To their thrice redoubted king, and to his sage counsel, sheweth John Botild of Leytloft that the Monday next after the ascension, in the forty ninth year of our lord the king, that now is, a ship of Scotland, charged with divers merchandizes of the merchants of Prule, &c. (whereof the master's name is Henry Luce) was chased by tempest into Kerkele-road. And that the same day one William Savage, clerk and servant to William Ellis, by command of the said William, to clof the said ship for the merchandizes not discharged there, 17 nobles and a last of &c. And because that William Ellis knew that W. Cooper was to come to the parliament, and shew these and other grievances in aid of the merchants, and also to shew how the great prices of herrings might be amended in aid of the whole realm, the said William Ellis, by false suggestion, caused the said W. Cooper to be arrested and put in prison in the tower for three weeks.

May it please you, &c.

Here I observe that the accusation of a private person ought to be legal and certain, as that was.

This accusation consists of two parts; the unjust taking of 17 nobles, &c. from the merchants of *Prule*, and the imprisonment of the petitioner by false suggestion to the king.

Upon hearing of the matter, the lords ordered, That as for the complaint touching the 17 nobles, it should be sent to the king's bench to be tried there; but the lords themselves determined the imprisonment upon the false suggestion to the king, and awarded *Ellis* to prison, to pay fine and ransom to the king, and damages to the accusers.

The lords received the latter part of this complaint for two causes: The one, for the false suggestion to the king, limited by the statute of 31 *Edward III.* to be punished by the chancellor, lord treasurer, and the council if it be untrue; all which were present in the parliament.

The other, for a scruple which might arise out of the words of the statute, which provides for false suggestions only to the king himself. *Whereas Ellis his false suggestion was by a letter written to one of the king's servants, which being shewed to the king, his majesty caused the petitioner to be imprisoned.* And this the lords expounded to be in *Ellis* a suggestion unto the king himself. And had this point been truly triable at the common law, the lords had referred it thither. This is but my own conceit.

Anno 5 *Richard II.* num. 43, 44. *Richard Clyndon*, Esq; by his bill exhibited to the king in parliament, accuseth Sir *William Cogan*, knight.

Anno 5 *Richard II.* num. 45. the mayor, bayliffs, and commonalty of *Cambridge* were accused, &c.

The next of this kind is a very slanderous accusation of the chancellor, which I will briefly declare, and the whole proceedings therein, for that it differs in some points from the rest.

The parliament of 7 *Richard II.* at *Salisbury*, began the Friday after the feast of St. *Mark* the evangelist, April 20th. On the 24th of May next, *John Cavendish*, fish-monger, complained in this parliament:

First, Before the commons of *England* in that assembly, in presence of some prelates and temporal lords, and afterwards before all the prelates and temporal lords in full parliament.

In the beginning of this complaint, he desired the lords (for God's sake) to grant sure and speedy protection for the safety of his life, and that he might have sufficient surety of the peace against those of whom he would complain; and especially he demanded surety of Sir *Michael de la Poole*, chancellor of *England*; and accordingly the chancellor did, at the commandment of the king find sureties, viz. two earls, &c. Then the fish-monger rehearsed, how that all the last parliament, which was held at *Westminster*, at *Albanslode* in the same year, he did sue by his bill to have restitution of certain merchandizes of great value, (from *George Mansfield* and three others) which was lost upon the seas by them at such time as they had undertaken the safeguard of the seas, and of the merchandizes passing and coming in the mean time, against all enemies out of the royal power. The which was endorsed faith he, and committed to the chancery, to discuss and determine the matters therein comprised, according to law and reason. Whereupon he dealt with one *John Otrey*, a clerk, and household servant, to the said chancellor, for his master's favour and furtherance in the business. The clerk, after he had viewed a copy of the bill, and considered of the business promised,

promised, that for forty pounds to his lord's use, and four pounds to his own use, he should have speed: That he gave him his bond for 44 *l.* to be paid at a day to come, and afterwards delivered unto the said *Orey* certain herrings and sturgeon, to the value of nine or ten marks, to the use of the said chancellor in part, and three yards of scarlet, which cost him 32 *s.* unto *Orey*, for his own use, in part of the said 4 *l.* Notwithstanding all which, he found no favour from the chancellor in his suit, but was delayed, and still is, and cannot have justice therefore.

That the said *Orey* told him, that he could have had more money of his adversaries to have been against him; which made him suspect the worst. But, said he, whether the chancellor shall be reputed privy to this, God knoweth; judge you my lords; for the chancellor hath paid him for his herrings and other fish, and sent him his bond cancelled; but whether he did it out of conscience, or to avoid slander and reproach, he knew not; judge you, my lords; but he was not paid for his three yards of scarlet.

Unto this the chancellor made his answer, not presently, but at another time; for the record saith, he answered first before the prelates and lords, and afterwards before the lords and commons; whereas the commons were present when the complaint was made, it being in *pleno parlamento*.

And in the judges award, to whom this matter was afterwards referred, it is said to be *coram magnatibus & communitat' in parlamento*. So that the answer was made some other way.

First, He protested his innocence touching the delay of justice, and shewed how the delay was through the difficulty of the cause, and vouched the justices and the sergeants, who had often heard the pleadings.

Touching the bribery, he swore by the sacrament he had no knowledge thereof, until upon account with his officers, he found those fishes not paid for; and then he presently caused them to be paid for, and the bond cancelled, and sent him. He denied that his clerk moved him in that business; all which he offered to prove in such manner as the king and the lords should ordain, and demanded justice against the fishmonger for the slander. Unto which the fishmonger presently answered, and said, he did not accuse the chancellor himself, but his clerk only. The lords examined the fishmonger and the clerk about the bond, and his adversaries on their allegiance, whether they had given any thing, or promised to give? And finding the chancellor free from bribery, the lords acquitted him of his accusation aforesaid. Then, at the chancellor's request, the fishmonger was committed until he found sureties to appear *de die in diem* before the lords, and before any judges who should be assigned. The lords committed the clerk also; and afterwards the parliament growing to an end, the complaint was referred wholly to the judges to hear and determine the same, as well for the king, as for the parties, *auxi avant come les peres de parlement*, might have done, V O L. III.

if the complaint had been fully treated in their presence, and in the parliament.

The proceedings before the judges were in a schedule, annexed to the parliament roll, and were thus;

A commission was granted in parliament unto *Tresilian*, chief justice of the king's bench, and *Belknap*, chief justice of the common pleas, to hear and determine.

They met at *Westminster* June 14. and were assisted by the lord treasurer, lord keeper, lord privy seal, the master of the rolls, and the king's two sergeants, &c. and they called the fishmonger before them, and caused to be recited the said accusation, and the chancellor's answer; and then demanded of him what he could say why he should not undergo the penalty of the statute against such scandals, especially when as the chancellor hath acquitted himself in parliament, and is yet ready to acquit himself by any way possible?

The fishmonger denied that he slandered the chancellor, but the clerk only, &c.

The commissioners considering the accusation and answer in parliament, and especially that the fishmonger said he could not have justice in his cause before the chancellor, the contrary whereof was expressed and proved out of the records of the chancery, they adjudged him guilty of defamation, and to pay one hundred marks to the chancellor, and to be imprisoned until he could pay the same, and a competent fine due to the king.

It should seem the lords could find no time to examine the injustice he complained of, and therefore referred it to the judges.

Anno 6 Rich. II. *cap. Mich. numb. 59.* Divers bills were exhibited this parliament by the mayor, aldermen, and citizens of London, concerning the fishmongers, and the said mayor, and aldermen, and fishmongers were present at the reading thereof; where *Nicholas Exton*, who spoke for the fishmongers, prayed the king to receive him and his company into his protection, which was granted. *numb. 60.* Then one *Walter Sybill*, a fishmonger, craved audience, and said, these bills were not exhibited for any good zeal to the commonweal, but for meer malice to the fishmongers, for that the chief exhibitors of these bills being commanded to prison for sundry misdemeanors in the time of *Ed. III.* were then imprisoned by certain of the fishmongers, who then were chief officers in London, for which cause, malice was borne to that time. *numb. 61.*

To that, one *John Moore*, a Mercer, answered, that the citizens of London meant to keep the peace towards them, unless they went about to let into the said city the rebels of *Kent* and *Essex*, as the said *Walter*, and others did. *numb. 62.*

The said *Walter Sybill* took advantage of those words, and desired the lords to bear witness.

John Moore thereupon expounded his words, saying (as the report then went) and prayed the lords that the truth thereof might be further inquired of, in the city.

There is one only precedent of a complaint made by a private person in the house of commons, and of the commons proceeding therein, against a lord of the parliament; which was thus:

Anno 15 Hen. VI. Thomas Philips exhibited unto the commons, his bill of complaint against *John bishop of London*, for his long imprisonment upon suspicion of heresy.

The commons sent up the bill, being written in papers, amongst others, to the lords, without any message, for ought appeareth upon record. On *Monday* following, the bill was read, and the lords *excoGITabant*, that it did not belong to their house *de talibus frivolis rebus consultare*, and returned it to the commons.

Hereupon the commons sent——to the bishop for his answer in writing unto this complaint; which yet the bishop did forbear to do, until he knew the opinion of the lords herein, and acquainted their lordships therewith. The next day the lords answered all with one voice, *Quod non consentaneum fuit aliquem procerum alicui in eo loco respondendum*, *Lunae 2. Martii.*

In the parliament begun at *Westminster*, *anno 19 Jac.* *Sir John Bowser* knight, complained of the bishop of *Lincoln*, the then lord keeper; but he was not compellable to answer before the commons.

10 *Rich. II.* The commons accused *de la Poole*, openly in parliament before the king and lords; unto which the counsellors made a good answer (in the opinion of this age) yet upon the many replications of the commons, and the enforcement of his oath strictly against him, he was fined and imprisoned, &c.

In this parliament also, the lords and commons procured commission unto certain of the lords to inquire of the enormities of the realm, and to redress them. The king was so highly displeased with these proceedings, that on the last day of this parliament, being the 20th of *November*, he himself protested that nothing done therein should turn to the prejudice of him or his crown.

Afterwards he sought all means to overthrow those lords who procured that commission, *viz.* the duke of *Glocester*, the earls of *Derby*, *Arundel*, *Warwick*, and earl *Marshall*. And at a consultation thereupon, he sent for the chief justice *Tresilian*, and some other judges, and his sergeants at law unto *Nottingham*, where, on *August 25. anno 11.* he propounded certain questions containing all the points of advantage against the proceedings of the last parliament, which the judges affirmed to be treason under their hands and seals. Then the king thought to proceed judicially against those lords, but they kept together with the duke of *Glocester*, at *Haringey* with a strong guard: And the king sent for them, and all doubts of danger to their persons, being first removed, they came *Nov. 3. anno 11.* and kneeling before the king's majesty,

he demanded why they were assembled at *Haringey* park in warlike manner? They answered, for the good of the king and kingdom, and to remove certain traitors from about him, meaning the lord of *Ireland*, the archbishop of *Tork*, *Michael de la Poole*, *Sir Robert Tresilian*, and *Sir Nich. Brembre*. And with that they threw down their gloves and gages of the challenging to prove the same. Unto which the king replied, This shall not be done so; but at the next parliament, which shall be the morrow after *Candlemas* day, and then all parties shall receive according as they deserve.

In the mean time, he conveys away the parties accused, and acquires them by proclamation; then summoned a parliament at *Westminster*, *craft. Purificat. 11 Rich. II.*

Where these few lords appellants came well armed, which made the king unwilling to come amongst them; yet at last he came.

On the first day of this parliament, the duke of *Glocester* (one of the said appellants) kneeling before the king, shewed, that whereas he understood his majesty was informed, that he intended the deposing of him, and advancing himself to the crown, he was ready to declare his innocence herein, in such sort as the lords would ordain. Whereupon the king answered, he held him thereof acquitted.

On the second day of this parliament, the said appellants exhibited their petition to the king concerning several articles against divers lords and commons, whom they appealed of treason. The said articles being read in presence of the king and lords in parliament, the said appellants offering to make proofs thereof, required that the said appellees might be called to answer; and for default of their appearance, demanded judgment against them. Hereupon the king and lords deliberated. The judges of the common law, and the sages of the civil law were charged by the king to give their best counsel to the lords of the parliament, how to proceed in their appeal rightly. Who, after long consultation, answered the lords, that the appeal is in no point made and declared according to the order of the common or civil law.

The lords, after long debate, declared by the assent of the king, that the offences being committed by the peers, the cause should be determined in parliament only, and that by the law and order of parliament only, and adjudged the said appeal with the process thereon depending, to be good, according to the laws and course of parliaments.

And the default of appearance was recorded, and judgment given, &c. against those who made their default.

After which, *Sir Nicholas Brembre*, a commoner, was brought prisoner before the king and the lords at the request of the said appellants: And the said articles being read, he pleaded not guilty; which he was ready to defend with his body. Whereupon, the commons of the parliament said, that they had seen and considered all the said articles, which they found

to

to be true, and that they likewise, as much as in them lay, did also accuse the said appellees, which they would have done, and it appertained to them to have done, had not the aforesaid appellants pursued the said appeals. Whereupon was answered by the lords of parliament, That the battel doth not lie in this case; but that they, upon examination of the articles, would proceed to judgment.

Here I note, That the lords cannot proceed against a commoner, but upon a complaint of the commons: But here is not expressed how the commons came daily to have a sight of these articles. I deny not, but after they were read in their presence (for their presence is always understood in judicature upon life and death *prout postea*) they demanded a sight of the articles, and considered of them apart, and then supplied the defects thereof. And this also is to be observed, that the commons accuse commoners, as the lords do their own peers. I suppose that *Brembre* was denied the battel, because the commons accused him also; or otherwise he ought to have it granted upon an appeal.

Afterwards, the commons themselves accused and impeached divers commoners, *prout 2 Mar.* Sir Robert Belknap, lord chief justice of the common pleas, Sir John Carey, late chief baron, and other justices, &c. The records were brought into the parliament, at the demand of the commons, and the commons accused the justices for their untrue answer made unto sundry questions before the king at Nottingham, to the emboldening of the aforesaid offenders in their traitorous designs and attempts, &c. Unto which they answered, &c. were adjudged, &c.

And then follows another impeachment of the commons; thus:

The accusations and impeachments made by the commons of the realm, against *Simon de Burle*, Sir John Beauchamp, Sir John Salisbury, and James Berners, knights, do ensue underwritten, whereof the commons pray judgment in this present parliament.

Thus much touching the appeal of 11 Rich. II. But this begot another appeal in the 21st of the said king Rich. II. in the parliament begun Sept. 14. being the feast of St. Oswald.

Edmond earl of Rutland, Thomas earl of Kent, John earl of Huntington, Thomas earl of Nottingham, John earl of Somerset, John earl of Salisbury, the lord Dispencher, and William Scroop chancellor unto our lord the king, in their proper persons delivered unto our lord the king, then sitting in the great hall within the castle at Nottingham in his royal estate, with a crown on his head, a bill of appeal against Thomas duke of Gloucester, Richard earl of Arundel, and Thomas earl of Warwick. The which bill of appeal is recited in that parliament, and as it seems, *per copiam verborum inde*, was penned by the advice of some civil lawyer. It seems also they were very careful herein to avoid all errors of the former appeals.

For in that of 11 Rich. II. they appealed divers commoners, but here the lords appealed none but peers; then it was done by word of mouth, they being called to the king upon some other occasion, but now it was done solemnly in writing, and was delivered to the king sitting on his throne of state. There they offered to prove their accusation by battel (a thing not meet for the parliament) or in what course his majesty would ordain it; but here the bill was read in parliament, and they said, they have been, and are ready to prove, &c. as you our thrice redoubted king, and this honourable court of parliament should ordain. Not were they less careful in their proceeding to judgment, to avoid the errors in the former, *prout in the answer*. But these appeals are now abolished by 1 Hen. IV. c. 14. and not without cause; for as this accusation was extraordinary, so were the proceedings carried with a strong hand; the former by the lords, this by the king, *prout ex chroniculis in quinto comparat cum codice 1 Maii*. A brief whereof, so much as concerns this appeal, follows hereafter at large, with the precedents of 21 Rich. II. *Ad quod parlamentum convenire jussit rex omnes dominos sibi adhaerentes, cum sagittariis & viris armatis, tanquam ad bellum, & contra hostes omnino progressuri fuissent. Ipse vero rex ut efficacius proficere possit, nequam conceptus malefactores de comit' Celt' congregari fecit ad velandum locum stramine, &c. Exerat autem rex quandam domum amplissimam in palatio Westmonaster' quae pene totum palatii spatium occupavit; in qua sibi thronus parabatur altissimus, & pro cunctis regni statibus locus largus; & pro appellantis, in uno latere locus specialiter deputatus, & in alio latere locus largus pro responso assignatus; seorsim vero pro nobilitatibus parliamenti, & qui non fuerunt electi per communiatem. Et ferale nuncupatur parlamentum. Thus much of accusation by appeal, (which when any of the lords accused others out of parliament) was summoned; but God be thanked, they are abolished, 1 Hen. IV. c. 14.*

CHAP. III.

The Parties answer.

THE party accused is to be brought to his answer, otherwise the whole judgment will be erroneous, as was Mortimer's 28 Ed. III. numb. 10. and Spencer's 15 Ed. II. and John Matrevers's, 21 Ed. III. numb. 65. dorf. Although the party be absent, yet the parliament hath used all means possible to have his answer, *prout 21 Rich. II.* where the lords appellants, and the commons also accused Thomas Mortimer of treason; and the commons said, That it was notoriously known unto them, that the king had sent his mandate by *W. D.* a serjeant at arms, unto the said Mortimer, in Ireland, commanding him upon his allegiance to come before him in all haste, to answer, &c. And that the said Mortimer having notice thereof,

thereof, withdrew himself among the wild *Irish*, where the same serjeant, nor any other officer of the king's durst come, for fear of death: Wherefore, and for that his offences are notoriously known both to the lords and them, they prayed judgment, &c.

The king, the lords, and the procurators of the clergy considered of the request of the commons with good deliberation; and then the lords, with the said procurators, by the assent of the king and commons, did award that proclamation should be made through *England* and *Ireland*, commanding the said *Thomas Mortimer* to render himself in proper person to the king in what place soever it shall be in *England*, within three months after the 23d day of *December* next coming, to be at his answer; and they farther awarded, that if he came not, &c. that then he shall be judged traytor, and convict of all treasons whereof he is accused, and shall forfeit, &c.

Then the king adjourned the parliament, and the appellants to the 15th of *Hilary* next at *Shrewsbury*; on which day the said appellants declared to the king, that it was awarded that proclamation should be made, &c. *ut supra*; the commons did the like: And for that the said *Thomas Mortimer* came not, they had judgment.

In 7 *Hen. IV.* The lords agreed this judgment against the earl of *Northampton* and the lord *Bardolph*, who were fled to the rebels in *Wales*, and proclamation *ut supra*, throughout *England*. At the day prefixed they examined the returns of the proclamations in the presence of the commons, and so the judgment was agreed on in their presence also; and so it ought to be in all cases of life and death. And finding a small error, they awarded new proclamations in *London* only; and the return thereof was again viewed and considered in the presence of the commons, and then on the next day judgment was given.

Eodem anno 21 *Richard II.* The lords appellants accused also the duke of *Glocester* of treason; and although they knew he was dead, they prayed the king that he might be brought to his answer. Whereupon the king sent his writ to the council of *Calais* (unto whose custody he committed the said duke) to bring him into the parliament to his answer. The captain returned his writ, that the duke is dead; the which writ and return being read, the said appellants prayed judgment; and the commons shewed, that the duke's levying war against the king's person, is notoriously known to all the states of parliament, and therefore they desired judgment also, and had it.

And what may not the whole parliament do when they join in one? Yet notwithstanding fearing some error (as it seems) they brought the king, that if there were any thing on record, be it by confession or otherwise which concerned their appeal, that it might be openly known, and shewn in full parliament. Whereupon, by the king's commandment, was

read a commission granted unto *William Ricbill* justice of the common pleas, and a confession of the duke of *Glocester*, made before him, by virtue of the said commission; yea, and *Ricbill* himself, being commanded, did justify that the duke did write the confession with his own hand, in his absence, and afterwards read it unto him; so careful they were to have something to supply an answer. I marvel that *Ricbill* was acquitted of his proceedings herein at the next parliament of 1 *Henry IV.* where he affirmed that much of this duke's confession was altered after he had returned his commission. He well deserved to die, in that he spoke not of it.

Yet there is one precedent directly contrary to all this, *viz.* 11 *Richard II.* in that appeal which happened on this occasion.

The afore named duke of *Glocester*, and four other lords went to the king, and accused the duke of *Ireland*, the archbishop of *Tork*, *Michael de la Poole*, and others of treason; the king adjourned them to the next parliament, promised them justice there, and in the mean time conveyed away the parties accused, and acquitted them by proclamation.

In the next parliament, 11 *Richard II.* the articles of the appeal being read, the duke and other appellants offered to make proof thereof, and required that the parties appealed might be brought to their answers; and for default of appearance, demanded judgment. Whereupon the king did deliberate with the lords, and commanded the justices, and other sages of the law to give their best counsel to the lords how to proceed rightly in this matter of appeal; who after consultation therein had, answered the lords, That they had seen and considered the tenor of this appeal, which they said was in no point made and declared according to the order of the common or civil law. But they gave no answer touching the demand of judgment for default of appearance; whereupon the lords deliberated, and after by the lords assent declared that this cause committed by the peers against the person of the king and state of the realm, shall be determined in the parliament only, and by no other law than by the law and course of the parliament: And that it belongs to the lords only to judge in such cases. And with the assent of the king they did judge the same appeal, and the process thereupon depending, to be good, according to the law and course of parliament.

Then the lords appellants proceeded, and desired to have the fault of appearance recorded, and judgment given, and so it was. So likewise 21 *Richard II.* After the king had given the full power of parliament to determine all matters begun, into the hands of twelve lords, or six, and six commons, or any three, he adjourned the parliament from *Westminster* to *Shrewsbury* in 15 *Hil.* and there on *March* 22. it was shewed to the king how that *Robert Possington* was impeached at the parliament at *Westminster*, for being with the duke of *Glocester* in levy at *Haringay*, *an.* 11 *R. II.*

For

For which the said duke was adjudged a traytor, and therefore they brought the king to ordain the like judgment against *Robert Poysington*, though he was dead: Whereupon our lord the king, by the assent of the lords and knights of counties, having power, &c. awarded the said *Robert* guilty, &c. and that he shall forfeit, &c.

But these extraordinary precedents cannot lead us into the ordinary course of proceedings; and I alledge them only so, as their errors may be avoided.

To conclude, it is [the just and constant course of parliament, to bring the party accused to his answer; yea, though he fly justice, yet to send out proclamations into the countries, that he appear at a day, or else such and such judgments shall be given against him. I confess this course was omitted in the judgment against *Mompesson*, 18 Jac. and haply it was not then thought upon; the judicature of parliament being so long out of use; and therefore that cannot be alledged as a leading precedent.

And in that judgment 2 Hen. VI. against Sir *Jo. Mortimer*, upon an indictment of escape out of prison, being committed upon suspicion of treason, the said *Mortimer's* answer is not recorded; yet it is said he was brought before the lords, and the said indictment read in his presence, that he made an answer unto it, though not mentioned. And this proves that the party is to be brought to his answer; else *Mortimer's* presence had not been necessary.

Anno 17 Rich. II. num. 20. The dukes of *Lancaster* and *Gloucester* complained to the king, that Sir *Thomas Talbot*, with others, conspired the death of the said two dukes, and prayed the parliament to judge thereof. The fact was judged high-treason, and writs sent to divers sheriffs to apprehend him, which writs were returnable into the king's-bench: and open proclamation was made in *Westminster-hall*, that upon the sheriffs return, and the not appearance of the said *Thomas*, he should be convicted of treason, and forfeit, &c.

This was extraordinary in *terrorum*: But what may not the whole parliament do? They may alter law much easier than form.

In the answer is to be considered,

First, In what causes the party is to answer as a prisoner; and in what as a freeman.

Secondly, When council shall be allowed him, and when not.

Touching the first.

The parliament hath guided their proceedings therein *secundum legem terræ, & judicium parium*. According to the 26th chapter of *Magna Charta*, *Nullus liber homo capiatur*

vel imprisonetur, &c. nisi per legale iudicium parium suorum, vel per legem terræ. And therefore in causes capital, whether the party accused be a lord of the parliament, or a commoner, he is brought a prisoner to his answer *secundum legem terræ*, *prout* 4 Ed. III. numb. 16, &c. The lord *Berkley* accused by the king for murder of Ed. II. Anno 1 R. II. *Jo. lord Gomeniz* and *W. Weston*, upon the demand of the commons for surrendering forts beyond the seas. An. 4 R. II. Sir *Ra. Ferrers*, knight, was apprehended for suspicion of treason.

Anno 28 Hen. VI. Although the lords refused to commit the duke of *Suffolk* upon the commons complaint of him of a common fame of treason; yet when they accused him of particular treason, he was committed, and brought prisoner to his answer.

But in cases of misdemeanors it is otherwise; then the party accused, whether lord or commoner, answers as a freeman. The lord within his place, the commoner at the bar. And they are not committed till judgment, unless upon the answer of a commoner, the lords find cause to commit him, till he find sureties to attend, &c. lest he should fly; *prout Jo. Cavendish* upon the lord chancellor's demand of justice against him for his false accusation, was committed after his answer, until he put in bail, anno 7 Rich. II. and before judgment. And so *Michael de la Poole*, the said chancellor, 10 Rich. II. after his answer, and many replies of the commons, was committed, and presently bailed. Anno 50 Edward III. *William* lord *Latimer*, and *John* lord *Nevill*, being impeached by the commons, answered in their place; So did the bishop of *Norwich* and the lord chancellor, 7 Rich. II. And the said lord chancellor too, 10 Rich. II. answered in his place, though afterwards he was committed before judgment, upon request of the commons. The bishop of *Bristol*, 1 Jac. and the duke of *Buckingham*, 1 Car. I.

All these answered as freemen in their places, their offences not being capital. And the like precedents there are of commoners.

Anno 50 Ed. III. Rich. Lyons, *William Ellis*, and *John Peach*, did answer as freemen, being impeached by the commons. And whereas the commons did that year also accuse *Adam de Bury*, who was absent; the lords sent for him to come; but he contemned their authority, and came not. Then the lords, as it seemeth by the record, sent to apprehend him, and he could not be found; wherefore they awarded that all his goods should be put in arrest, *ibid.* n. 37. It is briefly entered, *Adam* was sent unto to come and answer in parliament; he came not, nor could be found: Wherefore it was awarded, &c. Which is sufficient to prove, that a commoner is not to be brought a prisoner to his answer for a misdemeanor, if he will appear.

5 *Rich. II.* The mayor and bailiffs by name, and the commonalty of *Cambridge* were complained of in parliament, for many outrages against the scholars there; and the lords sent one writ to the mayor and bailiffs that then were, and to the commonalty, to appear and answer; and another writ to the mayor and bailiffs that did the outrage; and they appeared in person, and the commonalty by their attorney. This was the ancient course. Yet even in these days, viz. 15 *Rich. II.* the prior of *Holland* complained of a great riot committed by *Henry Treble*, and divers others, in the parsonage house of *Whitewick*. Whereupon a serjeant at arms, by virtue of a commission to him made, brought up the said *Treble*, and one more only (the principal doers therein) before the lords in parliament; who, upon the return of the examination, confessed the whole matter, and were committed. But I suppose the serjeant at arms was sent, for haply they would have obeyed no writ; and yet he was sent for two of the principal offenders only.

At this day, if the commons accuse a commoner of misdemeanors, in such a state of liberty or restraint as he is in, when the commons complain of him, in such he is to answer, prout 18 *Jac.* Sir *Francis Michell*, and Sir *John Bennet* were both committed by the commons before their complaint to the lords, and so they answered as prisoners; but that in a sort may be called *judicium parium suorum*.

21 *Jac.* The earl of *Middlesex* being then lord treasurer, and accused of misdemeanors only, absented himself from the house: His charge was sent to him in writing, and he answered in writing. At the day prefixed for his trial, he was summoned by the great usher to appear. He came without his staff, and knelt, until the lord keeper willed him to stand up. There he protested, that he ought to answer in that place, and desired others might not be prejudiced thereby: And I hope they will not.

The earl did himself the first wrong, by absenting himself from the house; for he might have stayed there until judgment, unless when his own cause came in agitation.

§. 2. Touching council.

In all causes of felony, treason, &c. council antiently was denied to the party accused, prout anno 4 *Rich. II.* numb. 21. Sir *Ralph Ferrers* was brought to the parliament under the guard of the marshal of *England*, and arraigned at the king's behalf for suspicion of treason, who prayed to the king and to the lords to have council in that case. Unto whom it was said, That in all matters wherein council ought to be granted by the law of the land, the king or lords would allow it. And it was further said unto the said Sir *Ralph*, That sofar as the matter stands so much upon treason, that by the law he ought not to have council in this case,

of no earthly creature, but obliged himself to answer at his peril.

This last answer was given upon deliberation. And 5 *Rich. II.* numb. 44. Sir *Richard Cogan*, knight, being accused by *Richard Clynedon*, esquire, for extorting 200 *l.* from the prior of *St. John's* of *Jerusalem* in a riotous manner, required council, which was denied him, for that the cause touched treason.

28 *Hen. VI.* The duke of *Suffolk* being accused of treason, by the commons, desired copies of the articles, but no council, and he answered without council.

Primo Car. I. In the parliament begun *February* 6. the king's attorney exhibited articles of treason and misdemeanors against *John* earl of *Bristol*, and he had council allowed him; which was on this occasion.

Anno 21. *Jac.* The earl of *Middlesex* was denied to answer by council touching misdemeanors only, that precedent of *Rich. II.* of *Michael de la Poole* being mistaken, as I conceive. And afterwards the lords considering the inconveniences that might happen thereby, did order that council should be allowed to all delinquents in all cases generally. At the voting of which order, the king and prince were present, and I did expect some reply thereunto on the king's behalf, and especially observed whether the prince would any ways dislike of it, either in words or countenance; and he shewed none; which made me verily believe that he had been acquainted therewith beforehand; but he was not, as I shall make it appear.

In this present parliament, upon reading the articles of treason and misdemeanors against the said earl 6 *Maij*, and upon the earl's answer to them on the sudden, the journal is, the lords did answer that he should have council allowed him to plead his cause. But on *Monday* the 8th of *May*, the king sent a messenger to them, that he not suing for a default in cases of treason and felony: It is an antient fundamental law of this kingdom, and desired the lords to proceed with that caution, that antient fundamental laws may receive no blemish nor prejudice.

On the 12th of *May*, the lords answered this message, that by an order dated *May* 24. 21 *Jac.* Anno 1624. council was then present, and they had allowed the earl of *Bristol* council before the message came.

May 14. His majesty is content the earl of *Bristol* to have council, although his majesty knew that by the law he ought to have none; but takes exceptions to that order of the 24th of *May* 1624. That it was occasioned by the earl of *Middlesex*, whose cause was only criminal, which never till now extended to cases capital. And that the judges were neither advised with therein, nor the king's council heard for his majesty; and therefore his majesty is not satisfied about the general order, but will advise, &c. The lords thereupon allowed him council to plead, &c.

This parliament of the 6th of February, 1 Car. I. was dissolved before the cause of the earl of *Bristol* was heard and determined, and the said earl was sued in the *Star-chamber* for the very same matter contained in the articles against him in parliament: All which were but misdemeanors. And if it be lawful for me to speak freely, I believe the lords thought they were but misdemeanors, when they allowed him council in parliament.

But in cases of misdemeanors only the party accused was never denied council.

Anno 10 Rich. II. The commons accused *Michael de la Poole* of many misdemeanors in open parliament before the king. Afterwards in the king's absence, the chancellor said first to the lords, that he was chancellor of *England*, and for the time represented the king's person in his absence; and demanded whether he ought to answer without the presence of the king, since he was impeached of acts done whilst he was chancellor.

This received no answer. Secondly, He said, That he had appointed, by the advice of his council Sir *Richard le Scroope*, his brother-in-law, to answer for him to the impeachment. Wherunto the lords said, That it was honest for him to speak by his own mouth. And thereupon he made protestation that he might add to or take from his answer that which should be honourable and profitable for him: The which things unto him were granted. And the said chancellor declared as well by himself, as by the mouth of the said lord *Scroope*, That, &c.

I note here that council was not denied him, but that it was only told him, it was honest for him to answer by his own mouth.

Anno 7 Rich. II. The bishop of *Norwich*, for misdemeanors in general, numb. 15. was particularly charged by the chancellor, numb. 18. The bishop said, that albeit in this case he ought to have council, yet making protestation, that at all times he might amend his answer, he would answer in person, and so he did, numb. 19.

Anno 1 Car. I. The duke of *Buckingham* being accused by the commons of misdemeanors, had copies of the impeachment, and answered by council in this manner, viz. The duke being in his place, and standing, his council came to the bar, and then read the duke's answer, as it was penned in writing.

Yet sometimes in cases of misdemeanors, when the parties accused have demanded the copies of the articles, and council, and time to answer, the parliament hath compelled them to make a present answer without council; but this is rare, and I have seen but one precedent of it.

Anno 5 Rich. II. *die animarum*, num. 45. The mayor, bailiffs, and commonalty of *Cambridge* were accused by, &c. for that they in the late tumults and uproars confederated with other misdoers, did break up the treasury of the university, and compelled the chancellor

and scholars to release to the mayor all their liberties, and all actions, &c. In num. 46 and 47, several writs were sent to command them to appear. They appearing at the day, and answering to such articles as were objected by the king's council, and delivered in the two releases which were cancelled, numb. 48. Then the chancellor and scholars exhibited divers articles against them by way petition. Upon the reading whereof, it was demanded of the said mayor and burgesses what they could say, why their liberties should not be seized into the king's hands as forfeited? And they required copies of the articles, and council, and respite to answer, numb. 54, 55.

To the copy of the articles, it was answered, that inasmuch as they had heard them read, it should suffice; for by the law they ought to have no copy. And touching council, it was said, that wherein council was to be had, they should have it; and therefore they were then to answer to no crime or offence, but only touching their liberties, numb. 56. After many dilatory shifts, the said burgesses submitted themselves to the king's mercy, touching their liberties only, saving their answers to all other matters, num. 57. And the king by assent of the whole parliament, seized the said liberties as forfeited, num. 58. and granted the assize of bread, and all weights, measures, &c. to the scholars, num. 59. And the rest of the liberties he granted to the mayor and burgesses, yielding an increase of rent, num. 60. And there is no farther proceeding against them for other crimes; yet this also proves council ought to be allowed in cases of misdemeanor.

§. Next to the answer, follows the replication; and that in my opinion belongs to the party whose suit it is. If the commons impeach any man, it belongs to them, if they will reply. And to this end, either they are all, or some of them, to be present when the party makes his answer, and to consider thereof apart by themselves, and to reply if they see cause. Or else a copy of an answer is to be sent them; and their replication expected before any other proceedings be. If they do not reply, the lords may: But if the articles against the party be so drawn *ex parte domini regis*, then it belongs to the king and the lords alone: And the commons can neither reply, nor *de jure* demand the party to be put to his answer. All this will appear in the antient precedents which follow.

Anno 50 Ed. III. They impeached *Richard Lyons* for procuring patents and licences, &c. to carry, &c. to other places than to *Calais*. For divers other new impositions upon wools, &c. for levying the same to his own use, without view of a comptroller, for borrowing 20000 marks in *London*, for the king, and causing the king to repay thirty thousand marks: For buying of debts of the king at the twentieth penny, and less, and causing the king to pay the whole debt. In general words, for many extortions, &c.

His answer is,

First, to the third part, and pleads *not guilty*, which he is ready to prove: To which nothing is replied.

To the several impositions, he confessed he levied 12 *d.* on every sack of wool licensed, to his own use, but by express commandment of the king, and assent of the merchants. And for other several impositions, that he had paid them wholly to the king's chamber, and fully accounted for the whole year.

Unto this part of his answer also there is no replication recorded, it is drawn up so briefly; yet these which follow, shew somewhat of what was replied, *viz.* And it was said unto the said *Richard*, that he should bring forth his warrant by what authority he did these things. But he shewed no warrant in parliament under the king's seal, nor otherwise; but only he said he had command from the king himself and his council to do it. Now whether the lords would *Lyons* to shew forth his warrant upon the reply of the commons, or otherwise, it appears not by conjecture out of other precedents.

Eodem anno. The commons impeach the lord *Latimer*, that contrary to the proclamation upon the last truce with the *French*, he and his lieutenants and officers have taken divers victuals by force, without paying for the same, and that he extorted great fines and ransoms of divers persons and parishes of *Becherel* in *Brittany*, whilft he was captain there, for which he hath answered nothing to the king. And for the loan of 20000 marks made to the king by him, and *Richard Lyons*, to transport wool, &c. And also through his ill government, the fort of *St. Saviours* in *Normandy*, and the said fort in *Normandy*, called *Becherel*, and many more are lost. And also that he, of his own authority, discharged spies and fellows imprisoned by the king, wherein he incroached to himself power royal.

This is the effect of the impeachment; the answer follows.

First, He said, That saving to himself so much as ought to be saved unto him, as one of the peers of the realm, as well in giving judgment, as otherwise in time to come, if it please the king and lords here assembled, he will willingly give his answer unto him who will in special object any the said things against him.

It should seem that the commons advised hereon; for it followeth, *Et puis apres*, forasmuch as no person would in special openly accuse the said lord, of the said things in parliament, but that the commons would maintain the said accusations in common, he answered to each particular.

1. Touching the ransoms that he hath been before impeached for, and the sums of money he received, it appeareth that he owed the king 2000*l.* which he confessed, and submitted himself to the king's grace for the same. And soon after this, the commons having heard this answer of submission, prayed the lords that execution might be had of the said 2000*l.* pre-

sently against the said lord *Latimer*, as a thing passed by the said submission being made by him as aforesaid; for it shews not any agreement with the king, nor any pardon, or other discharge. And the lords answered, that his answer should be reported to the king, and thereupon right shall be done for the king.

2. Touching the acts done by his lieutenants, he said, that he is altogether innocent, &c. For he was then in *England*, by the king's command, and he had no part thereof, &c. And the commons thereunto replying, said, that although he be innocent, yet his lieutenants received it in his name; and therefore prayed he might answer to the king for his lieutenants, if they be not able, &c.

3. Touching the loans of 20000 marks, he absolutely denied he had any share or advice therein, he made in a manner a negative answer to all the rest; offering proofs; whereupon witnesses were examined, but no other replications of the commons mentioned.

Eodem anno 50 Ed. III. W. Ellis was impeached by the commons, for that he being farmer to the king of the petty customs in *Tar-mouth*, and deputy farmer to *Rich. Lyons*, of tonnage and poundage, &c. he extorted several sums of money from the merchants, and particularly 33 *l.* from a *Scottish* merchant at *Kirkcroad*, who was driven in thither by a tempest, but unladed no merchandize there.

The said *Ellis* answered in general, he had never taken any thing of the said merchants by way of extortion; which he was ready to prove.

The commons brought in four witnesses, who justified the extortion upon oath, and then demanded judgment. And *W. Ellis* rejoined to this replication, confessed the receipt of the 33 *l.* and avoided the extortion.

Eodem anno, John Nevil was impeached by the commons, for that he, as officer to the king, and one of his privy council, had bought divers tallies of assignments made by our lord the king, unto divers persons unto whom he was debtor, and had thereof due allowances in the exchequer; but the parties had of him little or nothing; and especially of the lady *Raven-shalm*, who is deceased, and *Reginald of Love*.

And after he was impeached, for that in this late voyage into *Brittany*, he had in the king's wages a great number of men at arms and archers, for which he accorded with the king, and those he carried with him were not sufficient, *come garcon & autres lieux*; and yet he received full payment in deceit of the king; and that by his default many forts were lost in *Brittany*.

And also at his passing at *Southampton*, his men did much mischief to the country, as if they had been enemies.

To the first, touching the buying of a debt due by the king to the lady *Raven-shalm*, he made a very good answer, and denied that he bought any debt of *Reginald Love* for gain. And the commons being present, desired that *Love* might be examined therein; and he was examined,

examined, and cleared the lord *Nevil* thereof. And thereupon *Michael de la Poole*, and *W. de Winged* being present, did expressly affirm, that the said *Love* had acknowledged before them and many others, the day before, that the said lord *Nevil* had bought the said debt for gain, &c.

And the said *Reginald Love* replying to their affirmation, said, that he never spake any such words to them or any other. *Et tantost les autres apres*, &c. And soon after the said knights and commons affirming that the said *Reginald* did not only speak those words, but also prayed that it might be shewed in open parliament, the said *Reginald* confessed, that, &c. and was therefore committed, &c.

Touching the second point, the lord *Nevil* shewed, that he made full muster of his men, &c.

Touching the third, the pillaging of soldiers, he said, that he did none; and if any were done, let the malefactors answer. And unto this it was said by the said lords of the parliament, that it was reason, sith the king paid the soldiers their wages, that the soldiers should answer for their ill deeds, and the captains should answer for themselves.

And thereupon the commons prayed judgment against the lord *Nevil* and that he might be put out of his office about the king.

Touching the articles of the lady *Ravenham* it was awarded in parliament, that the lord *Nevil* should make restitution unto her executors. *Quære hoc.*

That he be banished according to the quality of his offence, as others have been, &c.

I have translated this of the lord *Nevil* almost *ad verbum*; it needs no exposition.

The commons were present at the lord *Nevil's* answer, and desired that one witness, whom he had brought with him, and who gave them information of the complaint, touching the buying of the king's debts, might be examined. And examined he was in the presence of two knights of the parliament, and they did contrary his false answer; and afterwards all the commons came and testified against the witness.

This is sufficient to prove, that the commons may reply, and are to be present at the answer, or have a copy thereof sent them: But the commons did not reply unto the lord *Nevil's* answer.

Touching the pillaging of his soldiers, for ought appears, the lords replied to that part.

Primo Car. l. 6 Feb. The commons impeached the duke of *Bucks*, and declared against him in writing. The commons demanded a copy of his answer, that they might reply unto it, and it was debated at a committee, whether the commons might reply or no? Which was resolved in the affirmative, upon view of precedents, and reported to the house; and then a copy was sent to the commons. Thus much touching replication by the commons.

Where the articles against the delinquents are *ex parte dom. regis*, there the commons cannot reply, nor demand judgment; for the suit is the king's, and not theirs.

Anno 1 Rich. II. Upon complaint of the commons, *Jo. lord Gomeniz* and *W. Weston* were put to their answers; but the articles were exhibited *de part le roy*. The complaint of the commons was general; and though the commons be there present at their answer and judgment, yet they did neither reply nor demand judgment.

The king's steward before whom they were arraigned, replied, as shall appear by the precedent at large.

In like manner the commons demanded that the bishop of *Norwich* and others might be put to their answer, and the articles were drawn *de part le roy*. And the chancellor replied to their answer, the commons not once interposing therein.

5 Rich. II. The chancellor and scholars of *Cambridge* accuse the mayor, bailiffs, and commonalty of *Cambridge*, of many outrages and misdemeanors. They appeared and answered. The king's council replied, *numb. 49.*

C H A P. IV.

Of Witnesses.

THE next considerable part in judicature, after the answer and replication, is the proof by examination. The practice at this day is to swear the witnesses in open house, and then to examine them there, or at a committee, either upon interrogatories agreed upon in the house, or such as the committee in their discretion shall demand.

Thus it was in ancient times, as shall appear by the precedents, so many as they are; they being very sparing to record those ceremonies, which I shall briefly recite, and then add those of later times.

Witnesses produced by the commons.

Anno 50 Ed. III. The lord *Latimer* having answered to one of the commons complaints, touching a loan of 20000 marks for 30000 marks to be repaid, whereof he said he was innocent, it followeth thus immediately, &c. And thereupon it was testified in parliament by monsieur *Rich. le Scroop*, the late lord treasurer to our lord the king, and by *Wil. Walworth* of *London*, that when the said loan was made, the said *Walworth* offered in the name of the *Staplers*, to lend the same, and be repaid without usury, out of the customs of wool to *Calais*. Whereto the lord *Latimer* answered, he never heard of that proffer; and the others swore the said *William Walworth* did make the said proffer to him.

Anno eodem. The commons produced four witnesses to prove their complaints against *Ellis*, *les queux examinees in parlement*, said, &c. And there I observe that two of those witnesses had exhibited a particular complaint against *Ellis*, concerning a particular wrong done unto merchants, whereof the commons complained, and *Ellis* took no exception against them.

And

And afterwards being put to his answer upon their particular complaints for wrong imprisonment, &c. *Ellis* said, that they betrayed him as he was coming to *London*, and so he caused them to be committed, and the said complainants affirmed the contrary upon oath, and it was testified expressly by divers sufficient men, that, &c. agreeing with their oath.

Eodem anno, *John Peach* being accused for extortion, affirmed, he retained it by the assent of the mayor, recorder, and of the greater part of the aldermen, and being examined in parliament, affirmed there, that, &c. to the contrary, and then judgment was given.

Eodem anno, The commons accuse *John lord Nevil* for buying the king's debts of *Reginald Love*; which the said lord denied; and the commons desired that the said *Reginald* might be examined. And the said *Reginald* being charged upon his allegiance to tell openly before them the full truth, faith, &c. clearing the lord *Nevil*; but afterwards he confessed against him. He was examined in presence of two of the house of commons.

Many complaints were made against *Richard Lyons* and *William Ellis* in the parliament, and a commission sent to inquire of the behaving themselves in their offices.

1 *Rich. II.* *Alice Pierce* pleaded not guilty, and that she would prove by testimony of the late king's household, whom she named. The offence being for procuring *Ed. III.* privately to revoke an ordination of his council.

The lords gave her day, and in the mean time named a committee to examine witnesses.

The committee were the duke of *Lancaster*, earls of *Arundel*, *Cambridge*, *Warwick* and of *March*. And divers witnesses who are named, were sworn upon the holy evangelists, and diligently examined upon the articles objected against her.

The lord *Beauchamp* was sworn and examined; and the duke of *Lancaster* being one of the committee, was diligently examined before the rest of the said committee, but not sworn *ad testificandum*. Earls and dukes are not sworn.

A jury of the household was impanelled for her trial before the said committee.

The order made by the lords for the examination and trial. *Par l'assent des prelates & des seigneurs du dit parlement ordeigne fuist que cesles articles seroient trieiz par desmoigne ou par enqueste d'eux que seurent del hostel du dit aiel par queux la verite porroit mieuz estre connue.*

By virtue of this order, the said committee did take the examination of the witnesses, and after their examinations, it follows thus:

Et nyent meins seurent fait venir devant le duc & les ditz countes monsieur R. B. &c. And so names eight knights, and nine esquires, queux seurent jurrez a dire la verite si la dite Alice fuist coupable de les articles avant dits ou nemy.

Note, This is the only jury I find recorded

for misdemeanors in parliament. I make no doubt but if the delinquent doth put himself upon the trial of his country, that a jury ought to be impanelled therefore.

But if the commons impeach any man, they are in *loco proprio*, and there no jury ought to be; only witnesses are to be examined in their presence, or they to have copies thereof: And the judgment not to be given until the commons demand it.

For proof that the witnesses ought to be examined in their presence, *vide 50 Ed. III.* the impeachment of the lord *Nevil*, where *Reginald Love* was examined in presence of two knights of the house of commons, who contraried his testimony, *numb. 34.*

The proof that a delinquent may put himself *super patriam*, *vide 4 Ed. III.* where the lord *Berkley*, who waved his peerage, was tried by a jury of *Glocestershire* and *Warwickshire*, for that he was arraigned for the murder of *Ed. II.* at *Berkley* castle in *com. Glocest.* And he answered, that he was sick at that time at *Bewdley* in *com. Wigorn.*

But he was arraigned upon an information *ex parte dom. regis*, and not upon the impeachment of the commons; for then they had been *patria sua*. And as the party may put himself *super patriam*, so he may demand bail: But not when he is accused *ex parte domini regis*, *prout Clarence*, *anno 18 Ed. IV.* Nor when he is accused by the commons, *prout Brembre*, 11 *Rich. II.*

When the earl of *Arundel* was brought to answer the appeals, the lords appellants threw down their gloves by way of a challenge. The earl answered, *si essem liber, non resurgeram.*

Note, That the commons had accused them — also. *Vide a Herald. parl. lib. Mayleves.* And thereupon it was testified openly in parliament, That our lord the king had expressly said that day, before the same lord then present in parliament, *That he knew not how nor in what manner the said Richard was come into such an office about him; and which is more, he did not know him to be his officer.*

Anno 22 Rich. II. The lord *Cobham* being brought to his answer, for procuring a commission to himself and others, in derogation of the king's prerogative, 11 *Rich. II.* and for executing the said commission.

He denied the procuring thereof, and that he would not have used the said commission without the king's commandment, and that he told the king so much, and that the king commanded him not to intermeddle therein. Whereunto our lord the king answered and said, that he was in such governance at that time, that he could not otherwise say, because of them that were then about him. And that the lord *Cobham* knew well that the said commission was made at his will. The which thing the lord *Cobham* did not gainsay at his trial; and so judgment passed on him for the same, and he adjudged a traitor. *Et qui non vult.*

Anno 18 E. IV. George duke of Clarence was arraigned in full parliament; there is no mention thereof in the roll, but in a manuscript of that time, written by a sicer of Croyland. *Tam testis est vera, & disceptatio ea habita inter duos tantes humanitatis germanos. Nam nemo arguit contra ducem nisi rex; nemo respondet regi nisi dux. Introducili autem erant nonnulli de quibus a multis valde dabitur, an accusatorum an testium officiis sunt funtli; utraque enim officia in eadem causa eisdem personis non congruunt. Delevit enim obiecta dux ille per justificationem, asservit, si exaudiri possit, manuali defensione teneri causam suam. Quid multis numeror parliament los repulantes auditas informationes sufficere formavit in eam sententiam damnationis que ab Henrico duce Buck. pro tempore noviter creato Anglorum seneschallo prolata est. Postea dilata est executio, quo ad usque prolocutor communitatis in superiorem cameram cum sociis suis adveniens, novam ejus consuetudae rei requisitionem fecerat, & consequenter infra paucos dies factum est id qualescunque genus supplicii secreti infra turrim London. utinam sine malo, anno dom. 1418. regni vero regis E. IV. 18. Per anonymum in biblioth. Cotton.*

Here let us examine for what illegal proceedings the commons desired to have the cause tried again. The author saith, *nemo arguit contra ducem nisi rex*. This the commons held to be against law, that the king himself should enforce either article or testimony against a delinquent in a capital cause: For it is inconvenient, that he who hath the forfeiture of life, lands and goods, shall be accuser, witness, or judge. The commons were present at this trial, and considering the inconveniencies thereof, they returned, and made the request *ut supra*.

Primo Car. I. In the parliament of 6 February, John earl of Bristol was accused by the king's attorney of treason beyond the seas, 8 May 1626. The said earl petitioned the lords, that seeing several points of that charge are grounded upon private conferences, wherein his majesty by testimony becometh a witness, and in case the earl should be convicted, his commission cometh to the crown, &c. he desired their lordships to put his majesty in mind thereof, for the declining his accusation and testimony.

9 Maii, these questions were proposed to the judges.

1. Whether in treason or felony the king's testimony is to be admitted, or not?

2. Whether words spoken to the prince, who afterwards is king, make any alteration in the case?

And the judges were to deliver their opinion therein on the 13th day of the said month of May.

And on Saturday morning, being the said 13th day, the judges were desired to deliver their opinions.

The lord chief justice said, they appointed to meet and to consider thereof; and Mr. At-

orney desired to know the time of their meeting; and before that time he brought them a message from the king, viz. that his majesty was so sensible of his honour, that he would not suffer the right of his crown (which may justly be preserved) to be diminished in his time. That they might deliver their opinion in any particular questions concerning the earl of Bristol, but not in the general questions, whereof his majesty could not discern the consequence, which might happen to the prejudice of the crown, every particular case varying according to the circumstances.

4 E. III. The articles were read against Roger Mortimer; and it followeth thus: Wherefore our lord the king doth charge the earls and barons, peers of this realm, that so much as these touch him principally, and all the people of this realm, that you do unto the said Roger Mortimer right and lawful judgment, such as appertaineth to such an one to have, who of all the faults aforesaid, is very guilty, as he believeth. And for that the said things are notorious and known to be true unto you, and to all the people of the realm.

This was all the proof produced against Roger Mortimer. The lords hereupon judged him. But afterwards, anno 28 E. III. numb. 8. they reversed it as erroneous; so that although the king's testimony, confirmed by the common fame, was 4 E. III. received against Roger Mortimer, yet it was afterwards adjudged *nil accusament* in the 28th of the said king E. III.

In that parliament of 18 Jac. divers witnesses were examined in open house in the causes of Mompeffon and the lord chancellor, upon interrogatories agreed on before hand, and divers at a committee. And it was resolved, that none might be examined upon any thing that might accuse. Whereupon the earl of Southampton, one of the said committee, signified, that a scruple did arise, whether Sir Ralph Horsey should be examined, what bribe he gave to the lord chancellor; and upon the vote, it was agreed, he should, *disficiente comite Dorset*.

Eodem anno, The lords did find that the testimony of divers of the house of commons was necessary, touching the complaint against Mompeffon, and therefore sent a message to this effect.

The house of commons, before their complaint exhibited against the lord Cobham and doctor Feild, for a bribe concerning Egerton's case, 18 Jac. examined one Davenport, but not upon oath. The lords, when they had examined Davenport, found that the case was not so foul as he related it unto the commons, and therefore sent his examination again unto them, and then punished him for his false relation.

C H A P. V.

The judgment.

First, Unto whom the judgment belongeth, and the king's assent, and of the presence of the spiritual lords, the commons and the judges.

Secondly, The judgment itself, and by whom it was demanded, and by whom rendered.

In making of our ancient laws, the commons did *petere*, the lords *assentire*, and the king *concludere*.

So in judgments on delinquents in parliament, the commons might *accusare* & *petere* *judicium*, the king *assentire*, and the lords only did *judicare*.

§. 1. That the judgment belongeth only to the lords, appeareth by all the old records that I have seen; *propt* 4 E. III. against *Mortimer*, the earls, barons, and peers, did award and judge by assent of the king, &c.

§ H. IV. In the case of the earl of *Northumberland*, protestation was made by the lords, that the judgment belonged unto them only.

For the clearing of this point, that the judgment belongeth to the lords only, *vide* the protestation of the commons, 1 H. IV. which excludes the commons from any right thereunto, *viz.*

On Monday, November 3. The commons made their protestation in manner as they did in the beginning of this parliament, and then further declared to the king, that no record in parliament be made against the commons, that they are or shall be parties to any judgment given, or hereafter to be given in parliament. Unto which it was then answered by the archbishop of *Canterbury*, by command of the king, that the commons are petitioners, and not demanders; and that the king and the lords have ever had, and of right shall have the judgment in parliament in manner as the commons themselves have declared, saving the statutes to be made, and in grants of subsidies, and the like, though to be done for the common profit of the realm, the king will have especially their advice and assent: And that this order be held and kept at all times to come.

This excludes the commons from all right to judgment; but whereas it saith, the judgments in parliament belong only to the king and lords, that is to be understood touching the king's assent only, as appeareth by the replication of the parliament in this point in 2 H. V. which was thus:

In the parliament at *Leicester*, 2 Hen. V. num. 13. *Thomas* earl of *Salisbury*, petitioneth to reverse a judgment in parliament against *John* earl of *Salisbury*, his father, in 2 H. IV. and one of the errors assigned was, for that the judgment was not given by the king, but by the lords temporal only; whereupon the clerks of the parliament, at the king's commandment

gave copies of the said judgment of 2 H. IV. and of the said error assigned, unto the king's serjeants at law then present. *Ad sequentem solutionem juris regni in hac parte aversetur: Super quod servientes ad legem crastino die, domino regi, ac dominis spiritualibus & temporalibus praedictis hoc in parlamento petierunt scrutinium pro domino rege in hac parte. Quibus dictum erat ex parte domini regis, quod ipsi procederent ulterius absque aliquo scrutinio habendo quoad declarationem & judicium super supradicta, &c.* And afterwards day was given at the next parliament, which was held at *Westminster*, eodem anno 2 H. V. In which parliament the said judgment of 2 H. IV. being examined and discussed at full, *videbatur tam dicto domino nostro regi, quam etiam dominis suis antedictis, &c. quod idem judicium & declaratio praedicta versus eundem Johannem, &c. sunt & fuerunt bona & legalia declaratio & judicium. Per quod consideratum fuit in praesenti parlamento per praedictos dominos tunc ibidem existentes, de assensu dicti domini regis, quod praefatus nunc comes nihil capiat per petitionem aut prosecutionem suam praedictam; & ulterius tam domini spiritualis, quam temporales praedicti, judicium & declarationem praedictam versus dictum Johannem quondam comitem Sarum, ut praemittitur, habita sive reddita de assensu ipsius domini regis, assensu fore & esse bona & iusta & legalia: & ea pro hujusmodi ex abundanti decreverunt & adjudicaverunt.*

Out of the last recited precedent of 2 H. V. may be observed, that the temporal lords by assent of the king, may give judgment on offenders for capital crimes; and therefore, whereas it is said, 1 H. IV. that the judgment belongs only to the king and lords, that is herein explained.

The king's assent ought to be to capital judgments, and the lords temporal to be only judges therein, and not the lords spiritual. But in misdemeanors, the lords spiritual and temporal are equal judges, and the king's assent is not necessary, as shall appear.

§. 2. In what cases the king's assent is necessarily required.

Touching the king's assent, it is expressed in divers judgments on capital offences, 4 E. III. against *Mortimer*.

Anno eodem against *Simon de Bereford*; and there be divers other judgments that year of this nature, wherein the king's assent is not expressed; but against *John Mautravers*, *les peres de la terre, & juges de parlement* ajugent & agardent que le dit John be drawn, hanged, &c. not mentioning the king's assent. And there are two other precedents of the same nature briefly recorded; *Estre ce autiel jugement est acorde que soit fait de Boeges de Bayons & Johan. Devcroil. And Item autiel jugement est acorde de Tho. de Gurney & W. de Ocle,*

not mentioning by whom the said judgments of—death were given.

2 H. IV. The judgment against the earl of *Salisbury* and others, for treason, is by the king's assent; and so is the judgment of H. IV. against the earl of *Northumberland*, and 11 & 12 R. II. upon those several appeals. In all which the king's assent is recorded. And so the articles objected against *Simon de Burley*, without the king's assent, and against his will, which I shall here recite.

Item, The aforesaid duke, earls of *Arundel* and *Warwick*, &c.

And *Thomas Mortimer* continueth his traitorous purpose, and by force of men took and imprisoned divers men, your liege, &c. amongst others, *Simon de Burley*, knight, and him they carried in the parliament at *Westminster*, held the morrow after the purification of our lady, in the 11th year of our reign, and there were furnished against him divers points of crime and treason, and thereupon was demanded of every lord there present in parliament, his advice of the said *Simon*, touching the said crime. And afterwards the said dukes, and earls of *Arundel* and *Warwick*, would know your advice, thrice redoubted lord. You answer plainly, that the said *Simon de Burley* was not guilty of any the said points; and then they took upon them traitorously to have constrained you to have given your assent to the judgment which they have purchased against the said *Simon* upon the points aforesaid. And you thrice redoubted lord, would not consent to any judgment to be given against the said *Simon*. And yet notwithstanding the aforesaid dukes and earls took upon them royal power in prejudice of you, and derogation of your crown and without your assent, and against your will, and in your absence, and in the absence of many other peers in parliament, and without their assent, and against their will, awarded that the said *Simon* should be drawn, &c. and thereupon caused him to be beheaded, but traitorously against your crown, peace, and dignity.

This I have recited at large: Unto which the duke of *Glocester* made no answer, being dead before the said earl of *Arundel* pleaded the king's pardon, which was not allowed him.

The said earl of *Warwick* confessed all the articles in the said appeal, and put himself upon the king's grace, and the said *Thomas Mortimer* could not be found.

This parliament begun at *Westminster die Lunae post festum exaltationis sanctae crucis*, and was adjourned to *Shrewsbury*. And on *Tuesday 28 January*, the parliament there shewed unto the king how that they in the said parliament at *Westminster* had accused and impeached *John de Cobham* in the 11th year of the king's reign, with others convicted in this parliament, accroaching to himself royal power in judgment, awarded that the lieges of the king, *Simon de Burley* and *James de Barnes* knights, should be drawn, hanged, and beheaded

without assent of the king, and against his will, and in his absence, and in the absence of many other peers of parliament, who withheld themselves, and would not fit in such judgment, and against their will, traitorously against the peace of the king, his crown and dignity.

And prayed our lord the king to cause the said *John de Cobham* to join in this present parliament to answer to the things aforesaid, and to ordain such judgment against the said *John de Cobham* as the cause demands. The said *John de Cobham* was brought, &c. And touching the said judgment awarded against the said *Simon* and *James*, the said *John de Cobham* said, that it was told him by them who were present then, that it was the king's will to make such judgment against the said *Simon* and *James* convicted of the said judgment and award which he had so given against the said *Simon* and *James*, notwithstanding his answer; whereupon, &c. judgment was given against him, and he adjudged a traitor.

Here is objected, that the judgment against *Simon de Burley*, was given by the lords without the king's consent. Secondly, against his will. Thirdly, in the king's absence. Fourthly, in the absence of many of the peers, and against their wills.

Touching the first, viz. the king's not assenting.

It may be objected, that the lords gave judgment against *Wesselton*, 1 R. II. without the king's assent, but yet not against the king's will; for they respited the execution until the king might be informed thereof. And the reason then given for the said respite, was, for that the king is not yet informed of the manner of this judgment. But whether the lords proceeded to that judgment against *Wesselton*, before they informed the king, because the king's assent is not necessary, or for that it being the last day of parliament, they had no leisure to inform his majesty thereof, let the reader judge; yet it seemeth to me, that the king's assent is necessarily required in capital causes and judgments, for these two reasons:

First, For that all precedents mention the king's assent in capital judgments, except that one against *Mantravers*, 4 E. III. which might be the omission of the clerks, who drew up the roll; for it is said directly afterwards in the said bill, num. 6. that the peers gave those judgments in the presence of our lord the king, and by his assent: And except that of 1 R. II. against *Wesselton*, in the last day of the parliament, and it was three in the afternoon that day before the lords had determined what to do in that business; so that it may be the lords were prevented of time herein, to have which, they respited execution, for that the king was not informed of the manner thereof.

Secondly, For that the lords appellants 11 R. II. who had then great forces about them,

10 C

were

were so earnest with the king for his assent to the judgment against *Burley*, that the duke of *Glocester* told him, as appeareth by his own confession, 22 R. II. *That if he would be king, he should not intreat for Simon de Burley, to save him from death*.* And in the end, when his majesty would not assent to their judgment, yet they wrought so, that messengers were sent unto him, and brought word, (not before they gave judgment against *Simon*) and the king's assent is mentioned in the said judgment. All which the said lords would not have done, had not the king's assent been necessary.

And afterwards in the parliament of 21 R. II. the lord *Cobham* being accused for giving judgment without the king's assent, answered, that the messenger brought word, that his majesty had assented; And yet because he did not gain say that the king did deny his assent, the commons immediately demanded judgment. All which seem to imply, that the king's assent is necessary in judgments upon capital offences.

Toucking the second, viz. Judgment against the king's will.

It is all one with judgment without the king's assent.

Toucking the third, viz. In the absence of the king.

The judgments of this kind are good notwithstanding, so as the king doth assent; as that of *Simon de Burley*, 11 R. II.

Toucking the absence of many of the peers :

That is to say, of many of them, and against their will; this cannot invalidate their judgment, so as the greater number of the lords be then present (accounting the proxies of the absent lords) for it is not material whether some lords do absent themselves, or disassent. The chiefest matter is the assent of the lords who are present, either in person or by proxy. The others are to answer for their absence without a just cause shewn, or a proper assent.

§ 2. *In judgment on misdemeanors, the king's assent is not required.*

50 E. III. The lords judged divers commoners for misdemeanors, and the king's assent not mentioned; as *Richard Lyons*, *William lord Latimer*, a privy counsellor, *John lord Nevil*, a privy counsellor, *Jo. Peach*, and others. The king was then sick at his manor of *Eltham*, and on the last day of the parliament, the lords, prelates, and commons came before him there, and he heard the petitioners, and their answers for most part read, and also judgment given on the privy counsellors and others, *dont ils se leyron franchement le respous de mesme nostre seignior le roy, nunn.* 15.

Which shews that the king had not assented to them.

7 R. II. The bishop of *Norwich* was accused of misdemeanors, and judged.

10 R. II. The lord chancellor *Mic. de la Poole* was judged by the lords for misdemeanors, and *Speed* saith, that the king was much displeased thereat; for it appeareth he gave not his consent. And it was one of the questions demanded of *Trefilian* and others, 11 R. II. Whether the judgment were erroneous, or not? and resolved to be erroneous; yet it was not objected against any the lords appellors, that the judges proceeded without the king's assent.

§. 3. *The king's presence in parliament.*

In 4 E. III. The king commanded the lords to do right and lawful judgment on *Mortimer*. The which earls, barons, and peers, having examined the articles, came again before the king, and said, &c.

Ibidem. The king commanded them to give judgment on *Simon de Beresford*. The which earls, barons, and peers, came again before the king, and said, &c. And so the king was present at their judgment, but not at their consultations.

10 R. II. The king was present when the commons accused the lord chancellor, *William de la Poole* of misdemeanors, but he was not present at his trial; for he demanded if he ought to answer *sans presence de dit roy*, being chancellor? and in the end he answered notwithstanding.

21 R. II. In the cruel parliament of the lords appellants, the king was present at the parties: *Non constat* whether he was present at the consultation of the lords.

5 H. IV. The king was present when the earl of *Northumberland* was to be tried upon his own petition, and so were the commons. And the king delivered the petition to the judges for their opinion; but the lords claimed their right: But this was on the *Wednesday*, and the *Friday* following the king and commons met there again, and the chancellor rehearseth first, what was done the first day; And the lords having had competent deliberation on the said petition, and having heard and considered the statute, they adjudged, &c.

It is plain the king was not present at this consultation of the lords, though at their judgment.

7 H. IV. He commanded the lords to advise what manner of process shall be made, and what judgment shall be rendered against *Henry de Percy* earl of *Northumberland*; and a week after the lords declared their opinion to the king. And it appeareth in that roll very clearly, that all evidences and examinations were shewn and taken by the lords in the absence of the king, and their advice also agreed on in his absence, but the judgment reversed in his presence.

* A bold saying. This duke of Gloucester was many years after imprisoned for this at Calais, and died in his bed.

To conclude, the king may be present if he please, at the parties answer, in capital causes, and at the judgments given, *prout*, &c. but he was never present at other times of proceeding against the delinquent, nor at any answer for misdemeanors, for ought I have yet seen.

§. 4. The presence of the lords spiritual.

In cases of misdemeanors, the lords spiritual have ever been present, but never in offences capital. This is so generally received of all men, that it is not worth the labour to prove it; yet I will vouch the precedents; for it may be out of one or other of them somewhat may occur worthy the observation.

In misdemeanors.

In 1 R. II. *Alice Peirce* was brought before the prelates and lords in parliament, to answer, and the prelates and lords did ordain.

42 E. III. numb. 20. &c. *John de Lee* was put to reason before the prelates, lords, dukes, earls, barons, and some of the commons.

7 R. II. *Jo. Cavendish* accused the lord chancellor of bribery, before the prelates and lords in parliament. The chancellor answered before the prelates and lords.

In offences capital.

In 4 E. III. The earl of *Kent* was brought before the counts, barons, & autres grandes en mesme parlement, &c. for treason dors. numb. 38.

Eodem anno, the articles of treason being read against *Mortimer*, the king charged les counts & barons, les peeres de son realme, to give judgement. And judgement was given per les dits counts, barons & peeres come judges del parlement.

Item, The king commanded les dits counts & barons assembled in parliament, to give judgement on, &c. and so were four others tried in the same parliament, all for treason, and not one word of the prelates, either when the articles were read, or at the judgment.

6 E. III. post festum Sancti Gregorii, n. 6. 7. the parliament being commanded to consult of the keeping of the peace, and punishment for the breaking thereof, the prelates departed, pur ceo que aviez fuit dits prelates, que ne attinet pas a eux consulter de guard de la pees ne de chastisement de tiel; yet afterwards when they heard what was ordained touching those malefactors, for the apprehension of them by hueand cry, &c. to bring them before certain commissioners to be tried according to law, the prelates gave their consents also to the act, and added also excommunication by the assent of king, lords, and commons.

Anno 1 R. II. The commons prayed that such as gave up forts, puisent estre a respons a cest parlement. Et selon leur desert punis per agard des seigniors & baronage. And thereupon *John Gomeniz* and *William Weston* were

brought before the lords aforesaid in full parliament, &c. It is to be understood before the temporal lords; for the bishops are never comprised in the word *baronage*.

Anno 11 R. II. Divers lords and others being appealed of treason, and other misdemeanors, the prelates absented themselves during the trial, having first made protestation saving their right to be present in parliament, ut pares regni more solito interesse, considerare, tractare, ordinare, statuere, deservire & caetera exercere, cum caeteris, &c. Verum quia in praesenti parlamento agitur de nonnullis materiis, in quibus non licet nobis juxta canonum sacrorum instituta quomodolibet personaliter interesse, ea propter pro nobis & nostrum quolibet protestamur, quod non intendimus nec volumus, sicuti de jure non possumus nec debemus, intendit nec vult aliquis nostrum in parlamento dum de hujusmodi materiis agitur vel agetur, quomodolibet interesse, sed nos & nostrum quemlibet in ea parte penitus absentare, jure paritatis nostrae, & cujuslibet nostrum intendend. in dicto parlamento, quoad omnia & singula in ibi exercenda, nostris & eorum cujuslibet statui & ordini congruentia, in omnibus semper salvo. Ad hoc insuper protestamur & nostrum quolibet protestatur, quod propter absentiam non intendimus nec volumus, nec nostrum aliquis intendit, nec vult, quod processus habitus, & habendi in praesenti parlamento super materiis antedictis, in quibus nec possumus, nec debemus, ut praemittitur, interesse, quantum ad nos, & nostrum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmetur, seu etiam revocentur.

This was read in full parliament and enrolled at the request of the prelates, by the king's command and assent of the lords temporal and commons. Here the protestation saith (de jure interesse non debemus) but I think it intends that they could not be present by reason of the common law, and by reason of an ordinance made at the council at *Westminster*, in 21 H. II. by which all clergymen were forbidden, agitare judicium sanguinis, upon pain to be deprived both of dignities and orders. For surely as I think, they might otherwise have been present both by the common law, and by the law of God. But by such their long constant absence, even from our first parliaments upon record, the lords temporal have only heard and determined all matters concerning capital offences, which hath continued in them so long, that it is become their right, &c. So that now it will be a wrong unto them the lords temporal, if the bishops do any way meddle with such judicatures, either touching the answers, the replies, the proofs, or the judgment. For where they may not adjudge, they may not do any thing as a judge, that doth conduce to judgment. And therefore as heretofore they would be absent, now they cannot be present whilst the matter is in hand, but are to be absent altogether dum de hujusmodi materiis agitur, for some or other matter may happen

pen to be voted in their presence concerning the answer, replication, &c. or concerning the form of judicature herein: And by the voices of the spiritual lords that vote may pass against the major part of the temporal lords, who should sustain wrong therein.

Can they be present, and not vote?

I know that at all assizes and sessions, divers of the clergy are present till judgment be given in such cases; but their presence cannot prejudice the judge at the assizes by vote, as in parliament. And at sessions the lay and clergy are equally in authority to hear and determine.

Eodem anno 11 R. II. a special act passed at the request of the commons, to make good those appeals and judgments, notwithstanding that the spiritual lords *pur benefit & salvation de leur estate*, cap. 3. & in *parl. roll*, n. 28.

This act, I conceive, was occasioned by the clause in the said protestation of the prelates: *Ad hoc insuper protestamur, &c. quod processus habiti & habendi in praesenti parlamento super materiis praedictis, in quibus nec possumus, nec debemus interesse, ut praemittitur, inquantum ad nos attinet futuris temporibus non impugnetur*, &c. for there is no such act to make good any former judgment, notwithstanding their absence.

And 2 H. V. upon the petition of the earl of Salisbury, the king and lords temporal adjudged the judgment against his father in parliament, 2 H. IV. to be good, notwithstanding that it was rendered without the consent of the lords spiritual, which yet the said earl alleged as error in his petition; so that by the judgment of the whole house, neither the presence nor absence of the spiritual lords is necessary in such judgments.

In 21 R. II. the first petition that the commons offered was, that before this time many judgments and ordinances made in the time of the king's ancestors in parliament, have been repealed because the clergy was not present in parliament at the making of the judgments; and therefore they desired that the clergy might make a proctor with a sufficient power to consent in their wants, unto all things and ordinances to be done in this parliament, *numb. 9*.

Whereupon the prelates and clergy being feverally examined, deputed for them all *Tho. Piercy*.

But in ancient times (in *libro Mailcesti*) *numb. 9*. which hath written somewhat largely of this parliament; it is said, the pardons granted to the earl of Arundel, were first repealed by the assent of the prelates; for which he blames them much, saying, *Dederunt ergo locum praelati iudicio sanguinis in hoc facto, ita quod dubitatur a pluribus, si incurrunt irregularitatem pro negotio memorato, unde contigit quod propter istud minus peccatum consequitur, nam exactum est ab iis, vellent, nolent, ut laicam personam constituerent, ad ju-*

dicium sanguinis dandum in dicto parlamento, si necesse foret, & occasio emerisset.

I have perused all judgments and ordinances in parliament, and do not yet find one, whereunto any exceptions were taken for the absence of the prelates and clergy.

I find an exception to the judgment of the exile, in 15 E. II. for that it was made without the assent of the prelates, who were present, and protested in writing against it. And one of the errors whereupon it was repealed, is, for that it was made without the assent of them, who were peers of the realm in parliament. But this repeal was *per durem & force, &c. prout 1 E. III. c. 2*. So as this cannot be alleged for a legal precedent.

5 H. IV. The earl of Northumberland came before the king, the lords and commons in parliament. The lords made protestation that the judgment belonged to them only, &c.

The petition being read before the king and the said lords, as peers of the parliament (unto whom such judgments do of right belong) considering, &c. adjudged that it was neither treason nor felony, &c.

Note, That all this parliament, the bishop of London was chancellor, and he, as chancellor, delivered the opinion of the lords when they had acquitted the said earl of treason. Whereby it seems that he and the other bishops were present at the trial of life and death. Wherefore though the record doth here say, the lords, indefinitely, we must understand the lords temporal only; especially since they claimed the said judgment to belong to them.

In 4 E. III. judgment was given by the earls, barons, and peers, as judges in parliament in point of treason, where the prelates are not named; and therefore understood of the temporal lords only. This will be explained by the next of 7 H. IV. *rot. process. coram domino rege, &c.*

The king commanded the lords temporal, peers of this realm, to advise what process to make, and what judgment to render against the earl of Northumberland and the lord Bardolph. The lords advised thereupon, and reported their opinions to the king. The said lords, peers of the realm, by assent of the king, ordain, that proclamation should be made for the said earl and lord Bardolph to appear, or else to be convicted by award of the peers in parliament.

The king did farther demand the opinion of the said lords temporal touching the archbishop of York; unto whom the said lords temporal said, &c.

The commons prayed the king that they might have cognizance, &c. whereupon, by advice of the lords temporal, the returns of the former proclamations were made at the parliament door for the said earl and lord to appear.

By advice of the said lords temporal, the returns of the former proclamations were examined, and the said lords temporal considered of the errors therein.

By the said lords temporal, with the assent of the king, by their authority, new proclamation is granted, the return whereof is read in full parliament before the king and the said lords temporal.

Whereupon, the said lords temporal then being in the said parliament, by advice and assent of our lord the king, by their authority in parliament, awarded the said, &c. convict of treason.

Here all was done by the lords temporal, from the first beginning of the trial until the judgment, and yet the judgment is said to be in full parliament, notwithstanding the spiritual lords are not once mentioned, nor intended to be present at any time, whilst the matter of treason was handled.

§. 5. Touching the presence of the commons in cases capital.

I observe the presence of the commons to be necessary at the parties answer and judgment in cases capital.

Now one reason for the king's assent, and the commons presence in such judgments, may be this. Both king and people are to be satisfied for the death of the subject; therefore all trials for life and death, are publick in the full assembly of the court; and how can it be said in full parliament, when the commons, one of the states, are absent?

For this purpose the court of requests (called *camera alba*) was prepared for such trials, where both lords and commons might meet more conveniently. Yet though the commons were present at such times, they had no voice there. But at their return to their own assembly, they considered among themselves, if the proceedings were legal; and might come again and shew it, and require a rehearsing of that cause; as they did at the judgment of the duke of Clarence, 18 E. III.

Nor are the commons to be present when the lords do consider of the delinquent's answer, and the proofs, and do determine of their judgment.

The precedents are these.

1 R. II. *Gomeniz* and *Weslon* were brought before the lords and commons *seauts a la blanche chambre*, and answered on *Friday*, 27 *Novemb.* and there they were delivered to the constable of the tower, who was commanded to bring them again the next morning. In the mean time, the earls, barons, and baronets assembled, and advised from the time that the said answers were given in parliament on *Friday*, until part of *Saturday* to the hour of three, of the things touching the answer aforesaid, and then the prisoners were brought in to the parliament.

20 R. II. *Ros. de pardonatione Haxey.* 7 *Febr. anno praedicti*, praedictus Tho. Haxey coram nobis & omnibus dominis parlamenti nostri existentibus in alba camera adductus fuit & billa praedicta coram praefato Thoma ibi-

dem, per praeceptum nostrum lecta fuit, & quaesitum fuit per charissimum avunculum nostrum ducem Aquitan. & Lanc. seneschallum Angliae, a praefato Thoma, si ipse dictum praeceptum communibus tradidit.

5 H. IV. The earl of Northumberland was brought to his trial on *Wednesday*; then the commons were present; but I do not find that they were present with the lords between *Wednesday* and *Friday*, when the lords advised on the earl's petition. This record mentions not where the assembly was.

7 H. IV. After the lords had awarded proclamation against the earl of Northumberland, and the lord *Bardolph* to appear at a day, or judgment to be given; the commons not being acquainted therewith, they came and prayed the king, they might have cognizance what was done touching the said rebellions of *Salop*, and elsewhere within the realm; whereupon, new proclamations were made, and the subsequent proceedings were done in full parliament, in presence of the commons; and the record saith, upon the request of the commons.

A question hath been often asked, Whether the commons did heretofore sit at conference with the lords? Which I cannot very well resolve; but verily believe, that at all these arraignments the commons did sit with the lords.

1 Richard II. *Gomeniz* and *Weslon* were brought before the lords and commons sitting in the *white chamber*. The words are, *devant les seigneurs avant dits en plein parlement.* &c. But the commons are here intended by the words *en plein parlement*. And so was the commons demand, that they may be tried before the lords.

No other records speak whether they did sit or stand.

In judgments on misdemeanors.

The presence of the commons is not necessary, unless they impeach a delinquent, *prout* 50 E. III. and then they were present at all the answers of those whom they impeached, and demanded judgment.

And when the lords had rendered their judgment against the lord *Latimer*, to be prisoner with the marshal, and to make fine and ransom to the king, the commons prayed the king, he might also be put out of all his offices, and especially from being privy counsellor: Which the king granted.

And when the lords had determined one part of the complaint of the commons against *William Ellis*, touching a wrong done to certain *Scottish* merchants; the commons prayed a general enquiry might be made of the residue whereof they complained; which the lords granted.

And when the lord *Nevil* answered, they required that one *Richard Love* might be examined, to prove that which the said lord denied, and they departed; but two of the commons remained, and heard the examination,

and told the lords, that the said *Richard* had related it to the commons otherwise the day before, which the said *Richard* denied. Then all the commons came and justified it again, and thereupon the said *Richard Love* confessed it, and, on their demands, was committed.

This shews what interest they have in their own impeachments.

So in 10 *R. II.* when the commons impeached the lord chancellor, they were present at his answer, and so often replied, and enforced his oath against him, and required him to be committed, and so he was before judgment, but bailed presently.

But if the commons do only complain, and do neither impeach the party in writing, nor by word of mouth in open house, nor demand trial to be in their presence; in these cases it is in the election of the lords whether the commons shall be present or not.

And therefore when they complained of *Alice Peirce*, 1 *R. II.* the lords deterred her trial until the departure of the parliament, that is, till the commons had leave to depart.

And if the commons presence be not necessary in such cases where they complain, much less is it wherein they complain not; yet they have been present when they did not complain; but that was upon an extraordinary cause.

7 *R. II.* A fishmonger exhibited his complaint, to the commons against the lord chancellor, and afterwards to the lords in full parliament, in presence of the commons. But they were present no doubt at the lord chancellor's request, that he might clear himself in publick of the slander, and so he did.

The presence of the judges.

In cases capital, the judges are to be present also, otherwise it is not a full court; but they have no voice. And though there be divers precedents that complain of the prelates, *prout* 21 *R. II.* and 2 *H. V.* and this last of the commons, yet there is not one precedent that finds fault with their absence in these cases; for they are not *trattare cum cæteris magnatibus*, but *cum cæteris de concilio*.

Here may be objected that which *Tresilian* and other judges answered to one of the king's questions, 11 *Richard II.* touching the judgment of *Michael de la Poole*, that the same justices and serjeant would not give the same judgment, because it seemed to them, that the same is revocable, as erroneous in every part. *Vid. print. stat. 21 R. II. c. 12.* *Tresilian* was much mistaken, as much as in the other answers, whereby he determined that to be treason; and so here he gave his advice, not his consent; and yet he saith, he gave his consent. Read but a little further, and you shall find in the very same place, as followeth; *Which questions and the answers of the same, as well before the king and lords, as before the commons, were read and perceived; And it was demanded of all the*

states of the parliament, how they thought of the answers? And they said, that they thought that the justices made and gave their answers duly and lawfully, as good and lawful liege people of the king ought to do. And in the same manner Sir Thomas of Skelton, learned in the law, and William Hankeford, and William Brencley, the king's serjeants, being demanded by the king, of their advice in this behalf, said, That the answers were good and lawful. And that they would have given the same answers, if the said questions had been demanded of them. And my lord William Thirning, chief justice of the common bench, said, That the declaration of treason not declared, belongeth to the parliament; but if he were a lord or a peer of the parliament, if he had been demanded, he would have said in the same manner. And in like manner, said my lord William Richey, justice of the common place, and after the coming of my lord Walter Clopton, chief justice, he said in like wise. Wherefore the said answers be judged and affirmed for good and sufficient in the said parliament. Whereupon the king by the assent of the lords spiritual and temporal, and the procurators of the clergy, and the said commons, and by advice of the said justices and serjeants there being, it was awarded and adjudged, &c.

Here you see the manner of the judges assent, *viz.* their advice only. Nor shall you find their assents to any statute; yet the judges have ever used to be present at the trials in parliament upon life and death.

5 *H. IV.* The king delivered the earl of *Northumberland's* petition to them. And at the trial of any peer out of parliament, the judges are ever present on that day; and their presence is necessary for their counsel to the lords; but their assent is not necessary to the judgment.

5. The manner how the lords resolve on their judgment.

How this was antiently, appears in the appeals, 21 *R. II.* touching the death of *Simon Burley*, *viz.* It was demanded of every lord, who was present at the said parliament, his advice of the said *Simon* touching his crime.

Eodem anno, in the print. stat. 21 *R. II. c. 12.* the judges opinions were demanded in the same manner; beginning with the serjeants, &c. and so ascending to the chief justice.

And at this day the question is put by the chancellor or lord-keeper, and the pious baron answers first, *content*, or *not content*; and so the lords in order. But their lordships do first debate the judgment amongst themselves, and the question is out of that which seemeth to be most generally agreed on.

In the judgment itself is to be considered,

1. Whether it be *secundum & non ultra legem*.
2. By whom to be demanded.
3. By whom to be rendered.

Touching

Touching the first.

Judgments in parliament for death, have been strictly guided *per legem terrae*; otherwise they would not have judged the earl of *Kent*, the king's own uncle, to be drawn, hanged and beheaded, might it be left to their discretion. *Vide literas* Ed. III. to the pope, speaking of this earl's judgment by the parliament, for treason; *cui sententiae subditiis tamen quibusdam opprobriosis, & in detestatione tanti sceleris, de rigore legis nostri regni infligenda erat, dolentes acquievimus*, 4 E. III. But the roll is lost.

The lords judged *Mortimer* to be drawn and hanged as a traitor, 4 E. III.

Simile pro Simone de Beresford, n. 2.

Ibidem, numb. 3. They judged *John Mau-travers* to be drawn, hanged, and beheaded.

1 R. II. *Weslon* adjudged a traitor for delivering up of castles, forts, &c.

And so *Jo. lord Gomeniz*, a German, was adjudged to die; but because he was an alien, and a banneret, and was not the king's liegeman, he should be beheaded; that being the death used in *Germany* to gentlemen.

11 R. II. *Simon de Burley*, the earl of *Arundel*, and others, were adjudged to be drawn, hanged and beheaded for treason. They differ something, yet herein they agree, that the opprobrious death of a traitor, is, to be drawn and hang'd; which the parliament could not alter, no not in their judgments against the king's own uncle. It was *per legem regni infligenda*. The king might pardon all, and usually did, except beheading of the nobility of his own blood, and of later times, to all noblemen.

As the parliament could not dispense with, nor omit any part of the judgment on traitors, so they could not add more than the law required. And this may appear by their judgments of forfeitures of the parties estate.

The parliament, 4 E. III. spoke nothing what *Mortimer* should forfeit to the king: they well knew the law could give the king all his lands, in possession, reversion, or service. *Vide* the restitution of 28 E. III. numb. 10.

The ordinances in 50 E. III. numb. 35. against women which shall make suit, &c. to the king; against *Alice Peirce* by name, is upon pain of as much as she can forfeit, and to be banished. But had it not been for the former ordinance, the lords would not have given any such judgment against her; her offence being only for procuring favour to her friends from the late king, contrary to a former order of council.

11 and 21 R. II. The lords adjudged the forfeitures to the king, of some convicted on the appeals, greater than the law will give; but they passed special acts in each parliament to confirm both the judgments and forfeitures.

2 H. IV. n. 30. The lords adjudged and declared the earls of *Kent*, *Salisbury*, and others to be

traitors, and to forfeit, as the law of the land willeth.

7 H. IV. They adjudged the earl of *Nor-thumberland*, and the lord *Bardolph* to forfeit for treason, all their lands in their own demesne, or where others were seized to their use.

And so in fines and amerciaments, the judgments antiently were indefinite, *prout* 42. E. III. numb. 26. *John de Lee* is committed to the tower, there to remain till he hath paid fine and ransom to the king, and at the king's will and pleasure.

50 E. III. *Richard Lyons* is awarded to prison at the king's will, and to be put to his fine and ransom according to the quality of his trespass; who being brought before the lords, they told him, his ill deeds were so great, that he had not wherewith to make satisfaction; and he submitted to the king's grace: the lords awarded all his goods to be seized, and his body to be in prison at the king's will.

Eodem anno, the lord *Latimer* to make fine and ransom at the king's will, numb. 28.

Item, *William Ellis* the like, numb. 32.

John Peach the like, numb. 33.

Cavendish awarded 7 R. II. to pay damages to the chancellor, and to remain in prison until, &c. and the king *de sine suo competenti sibi inde debito*; but not set down how much to the king.

These fines were not put in certain, for that the law limits them to the king's will: But no doubt but after the judgment, the lords did rate them; as may be gathered out of *Richard Lyons*; where, after judgment, they called him before them, to consider, it seems, at what rate to tax the same; and they found it not sufficient.

And in antient court-barons, the amerciaments were ever assessed after the presentments.

In the *Star-chamber*, all fines were usually mitigated after the censure, and that court had *antiqua vestigia magni consilii*.

I hold that antiently the fines were often rated or taxed: And if the lords may mitigate a fine, a *major*, they may tax it after the judgment, the certainty not being then specified.

Judgments for satisfaction.

In complaints of extortion and oppression, the lords awarded satisfaction to the parties wronged, which sometimes was certain, sometimes general, but always *secundum, non ultra legem*.

42 E. III. numb. 27. Full restitution was made unto *William Latimer* of the wardship and marriage of the heir of Sir *R. Latimer*, whereof he was ousted by durels by *John de Lee*. But this was done by a great council *per commandment du roy*, after the judgment.

William Ellis, 50 E. III. awarded to pay to *Botheil* and *Cooper* 20 l. a piece, for their damages, numb. 32.

John

prout 20 & 21 R. II. yet I have seen none of the judgments on the peers rendered by the steward of the king's house; and the reason may be, for that there was antiently a *seneschallus Angliæ*. *Quære tamen* whether the steward of the king's house, being a peer, may give judgment on a peer or not? I think he may, if there be no steward of the house constantly made every parliament, though but during the sessions. The last considerable thing in judicature is,

CHAP. VII.

The execution of the judgment.

AND first in capital offences, I have seen but two precedents thereof in the parliament rolls.

The first is, 4 E. III. which begun on Monday after the feast of St. Katherine. There were long articles exhibited against Mortimer for treason; and he was adjudged to die for treason; and thereupon, saith the record, commandment was given to the earl marshal to execute the judgment; and also to the mayor, aldermen, and sheriffs of the city of London, and to the constable of the tower, and likewise to them who had the guard of the said Mortimer, to be aiding to the said earl marshal, to do the said execution. The which execution was done and performed upon Thursday, next after the first day of the parliament, which was the 29th day of November.

Ibidem num. 2. Judgment was given on Simon de Bereford, to be drawn and hanged: And thereupon it was commanded that the marshal should do execution near the tower of London. And the said earl of Arundel was beheaded on the same day. The earl of Nottingham, one of the lords appellants, was lord marshal at that time, and therefore his deputy did execution.

Item, The earl of Warwick being adjudged to die, the king did pardon the execution, and granted him his life, viz. that he should remain in perpetual prison out of England, in the isle of Man, &c. and that he be at sea on his passage before the end of one month. And thereupon he was delivered to monsieur William le Scroope, and to monsieur Stephen his brother, to bring him safely to the said isle of Man, &c. The earl marshal was commanded to do execution on a peer, and the marshal on a commoner. The command no doubt issued from the lords, with the king's assent herein.

Thus much touching execution *quoad mortem*.

In misdemeanors, the greatest corporal punishment hath been imprisonment. I find no other in antient parliaments; but who was the officer to carry the delinquent to prison is not recorded, save he to whose custody he was committed, *prout* 42 E. III. John de Lee was committed to the tower, & dit fust a monsieur Aleyn de Buxhull, constable de la touer, quil preist garde de lui.

Anno 50 E. III. numb. 28, & 29. The lord Latimer is awarded to prison, *desse en guard*

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du marshal; and afterwards upon mainprise of divers earls, suffered to go at large. So it seemeth that first he was committed, and delivered to the earl marshal immediately.

Primo R. II. William Fitz-Hugh was committed to the tower, but it appeareth not who carried him thither. At this day the lords have used to impose some corporal punishment on misdemeanors, *prout Flood*.

And at this day if a peer be committed to prison, the gentleman-usher hath the charge of him thither, and the serjeant attending on the great seal, *prout anno* 18 Jac. 16. Febr. the earl of Berks was sent to the Fleet by the gentleman usher, for forcibly thrusting the lord Scroop in open house.

Anno 21 Jac. 13. Maii. The earl of Middlesex was committed to the tower, and a warrant given to the gentleman usher to carry him thither.

Anno 1 Car. In the parliament begun 6 Febr. the gentleman usher was commanded to bring the earl of Bristol.

But if a commoner be committed, the serjeant at arms attending on the great seal doth usually carry him to prison, and he also hath the charge of him, and to see any corporal punishment inflicted on him.

Anno 18 Jac. Wright and two serjeants at mace, who had arrested a servant to the — were censured to ride with papers on their heads, for their wilful contempt and scorn of the privileges of parliament, and for that the serjeant at arms did not see the whole punishment executed on them, he himself was committed.

CHAP. VIII.

For recovery of damages, or restitution to the party aggrieved.

ANNO 50 E. III. Botheil and Cooper had each of them twenty pounds awarded for their damages; and it is not there declared how they should recover the same.

In the same year John lord Nevil, upon complaint of the commons, is awarded to make restitution to the executors of the lady Ravensham; neither when the same is to be restored, nor the manner how the same shall be recovered, is declared.

In those two cases, I conceive the parties are to have their remedy (the parliament being ended) in the chancery, and not in any other inferior court at the common law: But the lords in parliament may direct how it shall be levied.

Anno 1 R. II. The lords adjudged Alice Peirce to forfeit all her lands and goods to the king; and notwithstanding this forfeiture, if she hath purchased any lauds by force or duress, it shall be void, and the party grieved to have his remedy by process in the chancery, and by advice of the lords of the council, let right be done and restitution made.

Anno 7 R. II. John Cavendish was awarded to pay a thousand marks to the lord chancellor for his damages, and to remain in prison until he had paid it.

10 E.

O F

OF THE
ORIGINAL
OF
Ecclesiastical Jurisdiction
OF
TESTAMENTS.

OF THE ORIGINAL OF Ecclesiastical Jurisdiction OF TESTAMENTS.

C H A P. I.

The intrinsecal jurisdiction not given to the church by the civil law.

THE jurisdiction of testaments being either intrinsecal or extrinsecal, (that is) either touching probate, or recoveries of legacies: First, for the intrinsecal; It is clear that it came not to the bishop by imitation; or otherwise, from the imperial civil law; For by the elder part of that law, regularly the probate or aperture of wills was before the ^a *praetor*, and afterwards the obligation, insinuation, and probate of them in *Rome*, was before the ^b *magister census*, or *apud officium censuale*, as it were before the barons of our exchequer; and that continued into later time. And the same officer by the name of ^c *γενεσις*, or *generalis* in *Constantinople*, had the same authority. But also afterwards as well the *questor's* seal, as that of the *generalis*, became to be used at the obsequiation, and his authority also in the probate or aperture. And the emperor *Leo* ^d about the year 890. transferred all that herein belonged to the *generalis*, into the *questor's* place; yet so, that some other civil magistrates had the like authority. And what was done before these in *Rome* and *Constantinople*, was in other cities before their chief governors, as *defensores* or *praesides*. Neither was the church permitted to have to do

with the insinuation of testaments, but expressly forbidden by a rescript ^e of the emperor *Justin*: Nor is any thing that gives it, either among the novels of the *Greek* empire, or in the *Lombarda*, or *capitulares*, which have ^f been reputed as parts also of the imperial law.

C H A P. II.

Nor by the canon law.

NEITHER in any general council, or other part of the received canon law, doth any testimony occur, that gives the church this intrinsecal jurisdiction. But in the fourth council ^g of *Carthage* holden in the year 398. it was ordained, *Ut episcopus tuitionem testamentorum non suscipiat*. And this being then established by two hundred and fourteen bishops, was afterwards made a part of ^h the decrees, or canon law, collected by *Gratian*, and published and authorized by pope *Eugenius* III. about 1150. and the gloss upon that canon interprets *tuitio* for *aperture* or *probate*. So also pope ⁱ *Innocent* IV. understands it: *publicatio* (saith he) *fieri non debet apud episcopum*; and he vouches that law, ^k *consulta divalia tit. de testament.*

^a ff. test. quemadmodum aperiant. per tot. Et vide etiam auth. 74. §. si igitur licentia. ^b C. de epis. & cler. l. 36. repetita. & tit. de testam. l. 13. consulta divalia. & C. Theodol. lib. 4. tit. 4. l. 4. ubi videndus interpres verus.

Cujacius, & videtur gloss. Græcobarb. Meursii in γενεσις. ^d Novel. 44. formulas vet. testam. aperiendorum, videtur J. Paul. sentent. recept. l. 4. tit. 6. & Marculph. formul. l. 2. c. 37. & 38.

sum. & veruliores canonist. passim. ^e Cap. 18. ^f C. de epis. & cler. l. 36. repetita. ^g Histories in prooem.

extra tit. de testament. ^h Tit. de instrum. edit. §. ostens. 34. vid. D.D. c. nos quidem, & c. si hæredes, extra. tit. de test. & Linwood de test. c. item. §. approb.

V O L. III.

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to

to prove it. *Speculator, Hofiensis*, and others of the same time, and generally the rest that follow them, make the civil law only the square of the jurisdiction of the probates; and so it is truly affirmed in our books, that the probate belongs not to the church¹ by the spiritual law, neither is any such thing given by any later^m bull, or decretal from the bishop of *Rome*.

CHAP. III.

The extrinsecal jurisdiction by the civil law, in whom?

FOR the extrinsecal jurisdiction that gave recoveries of legacies; By the imperial civil law, where the legacies were *in pios usus*, the^a bishop of the diocese sometimes by himself, sometimes with the civil magistrate, provided for the execution of the testator's meaning: otherwise the jurisdiction of legacies, and what else falls under testamentary disposition, was and^o is, the magistrate's only.

CHAP. IV.

In whom by the canon law.

BUT by the canon law, the general care of execution of testaments is committed to the bishop: Yet I find not any canon to that purpose received into the body of that law, now in authority, before the time of the decretals; which have out of some council of *Mentz* these words; *¶ Si haeredes iuxta testatoris non impleverint, ab episcopo loci illius omnis res quae eis relicta est canonice interdicatur, cum fructibus & caeteris emolumentis, ut vota defuncti implerantur.* Out of what council of *Mentz* this is taken, I have not yet learned; but in the same syllables it occurs in *Burchard*, that lived about six hundred years since, with the marginal note of, *ex concilio Moguntino*. What other texts are, touching the power of the canons over performance of testaments, have reference to that course ordained by the civil law, where any thing was given *in pios usus*, not to a general jurisdiction; for so is the canon *nos quidem extr. tit. de testam.* Neither is that canon *ultima voluntas in c. 13. q. 2.* taken out of *St. Gregory*, otherwise to be understood, if you interpret it as you ought by those¹ places of *Gregory* whence it is taken; but the canonists generally upon that canon *si haeredes*, take it, that *executio testamentorum ad episcopos spectat.* And so those old ones, pope *Innocent IV. Bernard*, and others of the rest, deliver; and the¹ later follow them, yet they commonly restrain it (and that in practice in other states) to legacies given *in pios usus*. And in the council of *Trent*, where twice the bishops power over testaments is provided for, nothing is spoken of but commutations of legacies, and of such as are given *in pios usus*.

Yet from ancient time both the intrinsecal and extrinsecal jurisdiction of testaments made of personal charters in *England*, hath been, and is, in the church, except in places where special custom excludes it. The original whereof being nor sufficiently found in either of these laws (the civil and canon) divers parts of which according to the various admission of several estates have been much dispersed through christendom, and some remain now exercised by imitation among us; it rests, that disquisition be made for it in the monuments of the kingdom, that according as they together with the canons afford light, some conjecture may be had touching the antiquity and ground of it.

CHAP. V.

Of the intrinsecal jurisdiction in the Saxon times.

THE eldest testament that I have seen made in *England*, is that of king *Edgar's* time, made by^a one *Birhtic* a gentleman orthane (it seems) of great worth, and his wife *Elfwith*, wherein they devise both lands and goods; and in the end of the will says her husband. *And ic biððe þon ȝoðer laran minne kȝofan hlafȝop. ꝥ he ne jafige ꝥ aenig man uncegne cyððe aþenȝe; And I pray for God's love, my leefe lord, that be do not suffer that any man our testament do break.*

It may perhaps thence be collected, that the protection or execution of this testament was within the jurisdiction of the lords court, as also the probate; and that especially, because divers lords² of manors have to this day the probate of testaments by custom continued, against that which is otherwise regularly settled in the church. But the same testament being for lands as well as for goods, it may be that this clause had reference to the lord in regard of the land only, (to the alienation of which, his assent might be requisite) or to denote him for the testator's best friend, as one chosen overseer of his will. And indeed he desires all other good people to see his will be not broken. Which makes me only offer it, as what another man's fancy may work on. But I conceive not out of it enough to prove either way any thing touching the jurisdiction of testaments.

Nor in the *Saxon* times appears any thing that can sufficiently direct us to know, how it was exercised here, unless out of that example of *Siwertb* of *Durham's* testament, in the³ book of *Ely*, you may collect, that the probate was supplied in the life-time of the testator by inrollment, or leaving an indented copy of it with the alderman or sheriff of the county, in whose county-court the most of proceedings of temporal justice, and of the spiritual also (for the bishop sat with him, as in his consistory) were in the *Saxon* times; for so much perhaps may be conjectured out of it, as we faithfully here relate it. *Siwertb* in king *Ed-*

¹ 2 R. III. test. 4. 11 H. VII. 12 b.

² Quod discimus ex Bullari summa quam edidit S. Guaranta.

³ C. de epis. &

cler. l. 28. nulli. & l. 27. si quis ad declinand. anathem. 134. c. 10. & vid. c. 11.

⁴ ff. de petit. haered. & tit. de legat.

⁵ Extr. de test. c. 6.

⁶ Lib. 11. c. 34.

⁷ Videtur Greg. lib. 1. epist. 9. & lib. 9. epist. 20.

⁸ V. d. Gonzal. Zueres Prax. ecclesi.

Lam. 2. praetul. 2. §. 44. & Zeruia prop. episcop. verb. leg. ad quaest. 9.

⁹ Henricus de cast. 9. rep. 37. b.

¹⁰ In Biblioth. Cottoniana,

gar's time, lying sick at Lindane in the Isle of Ely, makes his testament, and sends for Brithnot abbot of Ely, and divers of the monks, and others of the gentry; and the abbot writes the testament in tribus chirographis, coram (so are the words of the book) cunctis fecit recitari, lectumque fecit incidi, unamque partem chirographi retinuit Siferthus, alteram autem dedit abbati, tertiam vero misit statim per praefatum Brithelmum (that was one of the gentlemen of the country then present) Aikwin aldermano, qui tunc temporis degebat in Ely, & petiit ab illo ut suum testamentum flare concederet, quomodo abbas illud scripserat; & ordinaverat apud Lindane coram praedictorum testimonio virorum.

Cum itaque Aikwinus alderman hoc audisset, & chirographum vidisset, remisit illico ad eum Wlnothum de Stowce cum Brithelmo, sciscitatusque est ab eo quid aut quomodo vellet de testamento suo: qui mox per eosdem renuntiavit ei, sic suum testamentum abique omni contradictione vel mutatione se velle flare, sicut praefatus abbas illud in chirographo posuerat. Quod ut Aikwinus alderman audivit, totum concessit, ut flaret sicut ipse Siferthus testatus erat. But indeed, in it lands lying in *Durham* were devilled to the abbey; and so, it was not only of personal charters.

The Saxon laws are very silent of any thing touching testaments; and we must remember, while we think of that example of *Siweth of Durham*, that the ecclesiastical and temporal courts of common justice, held as one by the sheriff and bishop, were not severed, as now, into the consistory, and county-court, until the conqueror did it by a law yet remaining, and elsewhere published.

In what intercedes from this time, until about *H. II.* I find not any testimony that gives light to this purpose. As the Saxon laws, so those of the conqueror, and of *H. I.* and *H. II.* mention nothing that takes of either kind of jurisdiction of testaments only, a charter of *H. I.* extant in *Matth. Paris.* and in the red book of the exchequer this occurs. *Si quis baronum vel hominum meorum infirmabitur, si eum ipse dabit, vel dare jufferit, pecuniam suam, ita datam esse concedo.* This may perhaps seem to denote, that the king's court determined of legacies, especially of the king's tenants. But indeed it proves not so much. But the eldest passage that proves clear enough here, is that which makes the inrinfecal jurisdiction to have been in the church, and the extrinfecal in the king's court; I mean that which is found in the treatise attributed to *Randal of Glanvill* chief justice under *H. II.* where he says, that if a legacy be detained, the executors or other friends of the testator, were to get the king's writ to the sheriff, commanding, *quod iuste & sine dilatione facias flare rationabilem divisionem* (that is, the bequest or legacy) *N. sicut rationabiliter monstrari poterit quod eam fecerit, & quod ipsa flare debeat, &c.* And it is plain

by the words there preceding and subsequent, that it hath reference to moveable or personal possessions, not to lands. So that it seems clear by that in *H. II.* his time, the jurisdiction of personal legacies was in secular courts. But if the issue in secular courts upon that writ came to be, whether the testament where true or no, or well made, or whether the thing demanded were in fact bequeathed, *tum* (says he) *placitum illud in curia christianitatis audiri debet, & terminari, quia placitum de testamentis coram iudice ecclesiastico fieri debet, & per illorum qui testamento interfuerint testimonia secundum juris ordinem terminari*: that is, as it must be understood, that upon issue of bequeathed or not bequeathed, of testament made, or no testament, the trial must have been otherwise than by the practice of the later law, wherein the testament is traversable, and the traverse triable in the king's court by certificate to the temporal court from the ecclesiastical, as at this day, of institution, bastardy, and profession in religion, and the like; And thence may it be well concluded, that at this time by the practised law, the probate or the intrinfecal jurisdiction was in the church; as the institution, bastardy, and profession, are to be certified, because within the bishop's jurisdiction. Some recorded testimonies remain of the first and third, and the nature of the marriage or cohabitation (that directs in the second) is to be judged of only in the spiritual courts. So the validity of the testament, or the truth of this or that particular legacy was to be certified from the spiritual court, because the probate had there proceeded, and the copy there remaining was most authentick; otherwise to what purpose should they have sent to the spiritual court in such a case?

But on the other side, as in the case of institution, profession, and bastardy, the consequences of them, (which are objects of their extrinfecal jurisdiction,) as descent, exclusion from inheritance, gaining it by a descent cast, or legal making a church full, or the like, are determinable only at the common law; so the consequences of a testament, that is, the recoveries of legacies, and such like, as it seems by that writ, were in the temporal, not in the spiritual court. I know the authority of that treatise is suspected, and some of the best and antientest copies having the name of *E. de N.* which, I have heard from diligent searchers in this kind of learning, affirmed to have been sometimes, *E. de Narbrough*, and not *R. de Glanvill*, it hath been thought to be another's work, and also of later time. But, as on the one side, I dare not be confident, that it is *Glanvill's*, so I make little question, that it is as antient as his time, if not his work. The *resse* of the precedents of writs under his name, the language, especially the name of *justitia*, always for that which we now from antient time call *justitiarius*; (and *justitia* was so used in writers under *H. II.*) and the law delivered in

^a In lib. *comesse*.

^b V. Spicleg, in *Edmerum*.

^c Lib. 7. cap. 6. & 7.

^d 29 Ed. III. 32. & 44 Ed. III.

16. 2. Perk. 493. 12 H. VI. 32.

^e Ita Jo. Salisburi de Negis Curial. lib. 1. cap. 15. & 16.

it talleth not of any latorage And howsoever it comes to pass, the *regiam majestatem of Scotland* published by command of *David* the first, under the time of our *Hen. I.* hath for the most part the same syllables with this supposed *Glanvill*, and expressly * the very passages and the writ that we have now here noted for testaments.

That extrinsecal jurisdiction of those times in the secular Courts, was perhaps denoted by those words in the testament of *Theobald* archbishop of *Canterbury* under king *Stephen*; *Supremis* (saith he) *deficientium voluntatibus suam accommodant jura favorem*, where he devotes only personal things and uses. I think, *jura* is rather to be taken for the common law, than the spiritual, which is, in the most usual phrase of that time, designed by *canones*.

In this time of *Hen. II.* divers fierce controversies fell between the law and spiritual jurisdiction, and the particulars of them are largely related at the end of *Quadriologus*, in *Gervase of Dover*, in *Roger of Wendover*, in *John of Salisbury*, and *Matthew Paris*, but in him most abruptly; yet not the least mention is in them touching any matter of this jurisdiction; And in the main cases of our spiritual courts depending under *H. II.* and sent by appeal to *Rome*, which yet remain in the epistles of *John of Salisbury*, there is not one that touches upon either of these jurisdictions of testaments in the church; But indeed there is one that may seem somewhat to prove for that which we note out of *Glanvill*, concerning the intrinsecal jurisdiction at that time in the temporal court: For in an appeal sent to pope *Alexander* the third, the case, as *John* of *Salisbury* relates it, was, that one *Richard de Anastia* in foro secularium judicium petitionem hereditatis ad bona avunculi obtinenda instituit, against *Mabile de Franckville* being daughter to *William of Sackvill*, to whom the plaintiff was nephew by his sister; and the point of the issue between the daughter here and the nephew, being upon the bastardy of the daughter, the spiritual court had the trial of it. If (*bona*) here be understood for chattels, as in our law it is, and so restrained, then was this *petitio hereditatis*, as a suit for *Sackvill's* goods, grounded also, as it seems, upon a testament of his: for in the relation of the case also, *Richardus instigebat*, says the author, *institutioni avunculi, petitionem hereditatis institvens*; and on the other side, *Mabile maxime patris novissime voluntati innitebatur*: which shews, that here was a testament in the case, and a suit for what was challenged by it in the temporal court. But *hereditas* and *bona*, it is likely, included here (as by the civil law) all possessions of the ancestor, both real of inheritance, and personal, that is, the *universum jus defuncti*, and not only our inheritance; Although it doth also amongst some ^b civilians denote no more, if at least they understand aright what they say, while they write, that

consuetudo est in Anglia qua primogenitus succedit in omnibus bonis: and in this case, if the issue had been upon the ruth of the testament, as it was upon the bastardy, it had been referred also to the spiritual judges.

C H A P. VI.

Whence *Lindwood* thinks the jurisdiction intrinsecal came to the church.

BY what is before delivered, it appears, that the intrinsecal jurisdiction, or probate was in the church; and that by express testimony, as antiently as the time of *H. II.* and by all probability it was in settled use before that time, being spoken of in that treatise called *Glanvill's*, as a known course of proceeding; although indeed yet I could never see an express probate in any particular case, elder than about *H. III.* But the beginning or course of this intrinsecal jurisdiction in the church, is not for ought I have yet learned, extant: However *Fairfax* tells us, ^b that it was by an act of parliament, which perhaps he took from that of *Lindwood*; *Haec libertas (ecclesiae) quoad approbationem hujusmodi* (saith ^c *Lindwood*) *fundatur super consensu regio, & suorum procerum (in talibus) ab antiquo concessa*. Where he means by *in talibus*, their power of committing of administration of intestates goods, as it is plain by his quotation of that constitution of archbishop *Stratford*, tit. de immunitate eccles. c. accidit. novitate perversa §. quidam etiam. That power was given, as I guess, by parliament in king *John's* time: but thereof more in due place. And *Lindwood* addeth, item fundatur super consuetudine in ea parte de scientia regum Angliae, diutius conservata: Which is indeed, that it is founded upon the common law or customary law of the kingdom; or that it hath like antiquity or original as other parts of the common law, that is, immemorial custom. For tho' it be exercised according to the civil and canon law in the spiritual courts, with some reference had to the customs of *England*; yet it is clear, that the power which the spiritual courts have to exercise it, is merely by the common law; although we find not when it came first to them, no more than we find divers of our settled courses and maxims in the common law; touching which yet we can without much difficulty prove, that at such or such times they were not in practice; as perhaps in the more antient ages, this was not in these courts. But that it was originally belonging to the crown, that is, to the temporal courts, which are all, and ever were derived from the dignity royal, is affirmed also, (as in that cited in *Henloe's* case, out of *Jocelin's* history of the archbishops of *Canterbury*,) in a writ ^d 2 *H. V.* that prohibiteth the archbishop of *Tork* to call the executors of the tenants of *St. Leonard's* hospital to prove their wills before him; because as the words are, *placita de cognitionibus scriptorum in regno nostro*

* *Regium majestatem*, lib. 2. cap. 38.

^a *Jo. Salisbur.* epist. 57.

^b *Epist.* 89.

^c *Barth.* ad tit. de summa tr. l. 1. num. 42.

^d 2 *R. II.* tit. ult. testam. 4.

^e Tit. de test. c. stat. verb. ecclesiae libert.

^f Cod. ma. hosp. S. Leonardi in biblioth. Cottoniana.

Angl. ad nos, coronam & dignitatem nostram specialiter pertinent: and also they had, time out of mind, used to prove them before the masters and brothers of the hospital. Here we see the testaments reckoned as other evidences, the trial and consuance whereof belongs only to the temporal courts: and at this day by special custom, many lords of manors have like probate in their courts baron.

By the way, for that which *Fairfax*, and others following him, tells us, that in all other countries the probate belongs to lay-judges, he is deceived, and deceives his readers. Indeed, in the most places of other states it belongs to the lay-judges; but in *France*^m generally the spiritual judges, both before *Fairfax* his time and since, had this jurisdiction of probate, and so have had without controversy ever since the disputations about it, and other parts of jurisdiction had with some clergymen, by *Coniers* attorney general to *Philip Valois*, and *Peter Drenx* in behalf of the duke of *Bretagne*, at such time as the clergy had there so extended their jurisdiction, *que les fauxbourgs estoient trois fois plus grands que la ville*, as *Pasquier* speaks of them.

C H A P. VII.

Testimonies of king John and Henry III's time, that may serve to prove the extrinsecal jurisdiction then in the temporal courts.

FOR the extrinsecal jurisdiction, as it seems by *Glanvill* and other testimonies, that it was in the king's courts under *H. II.* and so by all probability before; so out of other records of following time, somewhat may perhaps be collected to prove, that it continued long in them; as out of the patent of king *John* for *Oliver of Rochford's* testament, *Sciatis*^a (says the king) *nos concessisse testamentum Oliveri de Rupe forti sicut rationabiliter conditum est, & apud S. Florentiam veterem & Rupem fortem scriptum & ordinatum. Quare volumus & firmiter precipimus quod nullus executorum testamenti ipsius impediat, quin illud sicut rationabiliter conditum est, faciant.* Then out of that of *Peter de Roches* bishop of *Winchester*, and chief justice of England, touching the will of *Adam of Gurdun*; *Rex*^b *dom. P. Winton. episc. jussit. Angl. &c. Mandamus vobis quod teneri facias testamentum Adae de Gurdun quod fecit de rebus suis mobilibus & omnibus aliis in Angl. secundum dispositionem testamenti, excepta terra quam de dominio nostro habuit septimo Augusti. Teste meipso.* This expressly gives some legal execution of a testament, made of personal things, unto the chief justice of England. And in *5 H. III.* *Robert of Lexington* having the possession of all the goods of *Philip de Vletott* the testator, a writ goes

out to him to pay *William earl of Salisbury* a debt of ninety marks out of them, and that the rest should be delivered to the executors *ad faciendum testamentum*; and another writ was sent, that he should, *per visum & testimonium* execut. sell all *Vletott's* goods, & *denarius quas inde fieri feceritis, salvo faciatis repenti sub sigillo vestro & sigillo executor. praedict. donec aliud mandatum nostrum inde habueritis.* And in *7 H. III.* a writ is directed to the sheriff of *Lincoln*,^c reciting, that whereas it appeared, that *Richard Fitz-Dune* died not intestate, *Ideo tibi praecipimus, quod omnia catalla ipsius Richardi in manum nostram capta in balivis tua, sine dilatione habere facias priori de Noketon*, and other executors of his testament *ad faciendum inde rationabile testamentum*: and other like writs occur in the rolls of king *John* and *H. III.*

C H A P. VIII.

Suits of legacies personal in the spiritual court from the beginning of Henry III. Of the beginning of that course.

BUT however it may seem by those testimonies, that the temporal courts had some extrinsecal jurisdiction of testaments in the time of king *John* and *H. III.* it is clear, that in the beginning of *H. III.* suits for legacies personal were in the spiritual courts, and that, it seems, from custom settled in practice of the former times that were then newly passed. And perhaps it might be in the more ancient times *fori mixti*, and as well exercised in the one, as in the other court; as we have elsewhere shewed of the more ancient jurisdiction of *rythes*; Or it may be, that those writs in the former chapter, and the like, were but in case of tenants being testators, upon whose deaths all their goods were to be seized by the sheriff, or other such officer, and the debt (if any were) paid to the king, & *reliquum relinquebatur executoribus testamenti defuncti*, as the words are, both of the charters of king *John* and *H. III.*^d And perhaps by that chapter of the charter those writs may be interpreted, and *faciatis teneri testamentum* may be but only an moving of the king's hands from the goods, that so the executor might perform the testament; For that the spiritual court did from the beginning of *H. III.* exercise a jurisdiction for recovery of legacies, is infallibly proved by^e cases of *2, 4, 6, & 8 H. III.* and the attachments upon prohibitions extant in records of that time, are, *quare secutus est placitum in curia christianitatis de catallis quae non sunt de testamento vel matrimonio*; and many such more are both in the rolls and in *Matth. Paris.* It appears also in *2 H. III.* in the case of *Simon Fitz-Simon*, that even that suit for devisable land being devised, was thought to be good in the spiritual court *ex*

^a Henloe's case, apud v. cl. Ed. Coke par. 9. fo. 37, 38, 48.

videlicet testam. Leonodi abbatis Floriani Helgundii initio.

^b Claus. 1 H. III. par. 3. m. 7. & 15.

^c Claus. 1 H. III. par. 3. b.

^d Claus. 1 H. III. par. 3. b.

^e 1 H. III. m. prohib. 11. 4 H. III. ibidem. 18. 6 H. III. ibid. 17.

^f 1 H. III. coram W. de Raleigh, &c. rot. 36. in arce Londinensi.

^g Choppin. de dom. Franciae lib. 3. pag. 332. edit. 1558. &

^h Patent. 3 reg. Johan. membr. 6.

ⁱ Rot. claus. 16 Joh. membr. 31.

^j Rot. claus. 16 Joh. membr. 31.

^k Cap. 16. magn. cart. quam eadem donavit Johan. rex.

^l Mich. 16 & 17 H. III. rot. 15. &c. &c.

^m Mich. 16 & 17 H. III. rot. 15. &c. &c.

causa testamentaria, as if *laicum seodum ver- sum esset in catallum*, until the devisee had recovered it; and after the recovery, *iterum incipiebat esse laicum seodum* — as ^a *Bracton* says, where his printed copy is exceedingly corrupted. But it was clear law in the time of this *Bracton*, who was a judge in the common pleas in the later part of *H. III.* that *locum non habet probatio in causa testamentaria si catalla legentur & inde agatur in foro ecclesiastico*; and he reckons that of testaments *inter spiritualia, & spiritualibus annexa*, which agrees exactly in the known and practised consultations in the ^b register, *placita de catallis & debitis, quae sunt de testamento & matrimonio, ad forum ecclesiae specialiter dignoscimus pertinere*, &c. And although in case of legacy, as in case of tithes, the jurisdiction that gave the recovery of them, was sometimes in the one, sometimes in the other court, before it was restrained to the spiritual only; yet it seems by those cases of *Henry III.*'s time, which are testimonies beyond exceptions, that the spiritual jurisdiction over legacies, was long before in practice; otherwise I guess that exception *de testamento, & de matrimonio*, had not been so familiar in the prohibitions of that age. And notwithstanding those cases out of the records of king *John* and *H. III.*'s time, the temporal court not only prohibited not the spiritual court, especially in *H. III.*'s time, but also had not any conuolance of suits for personal legacies; for neither have I ever met with any suit in that kind in the plea rolls of *H. III.* or king *John*, or *Richard I.* (but very few are extant of the time of the two last) neither doth *Bracton* admit any such thing. And the author of *Fleta* in the time of *E. I.* tells us expressly, ^c *de causa testamentaria sicut nec de causa matrimoniali curia regis se non intromittet*. But the beginning of that practice of the extrinsecal jurisdiction in the spiritual court, is even as difficult to find, as that other of *probates*. *Lindwood* tells us, that ^d *libertas quoad secundum, scilicet, puniendum impediens, quo minus testamenta & ultimae voluntates defunctorum procedant, ortum habet a privilegio etiam in ea parte concessit, & a consuetudine similiter de scientia regum Angliae diutius observata*: and further, *potuit* (saith he) *habere ortum* out of those ^e laws in the code that

made the bishop a protector of legacies *in pios usus*. It might be also in regard of the purpose of those laws in themselves. And it were no great wonder, that the ecclesiastical court might have gained jurisdiction over all personal legacies under colour of such as were given *in pios usus*. But perhaps it will not be admitted for probability enough, that any part of the code being of the imperial or civil law, was ever so received here in *England*, as that it could induce any alteration touching the jurisdiction of the crown, that is, touching this extrinsecal jurisdiction, which (as is shewed) did belong to the temporal courts. But whosoever will not admit of any such conjecture, must yet remember, that presently from king *Stephen*'s time, when the civil law was new born into the light, it having lain forgotten by the space of six hundred years before in the western empire, the code and other parts of that law were familiarly read by our *English* lawyers; and I think as well by our common as canon laws; to omit that case of *Mabile of Francheville*, wherein it seems, a special regard was had to the civil law, that permits not a meer bastard and succession *ex testamento* against a lawful heir of blood; for otherwise, how could *Richard* the uncle's institution, as it seems by a former will have made colour of right for him, against the later will which *Mabile* pretended, unless he relied upon her being a bastard. But I should think it probable enough, that the original of this jurisdiction for legacies, was out of the canon law, and that especially from that canon *Si haeredes, &c.* before cited. For although the decretals, wherein it stands now authorized for a general law, were first published but in 24 *H. III.* by *Gregory IX.* and that we see, by infallible testimony already brought, that legacies before that time, were recoverable in the spiritual court, yet by likelihood that very canon was inserted in all, or some of those eight more antient compilations of the canons authorized by some former popes; (which is the more probable, because we find it also in *Burchard*) and so it might be, long before sufficient ground of this extrinsecal jurisdiction in the ordinary; but I sought here for authority, more than I durst be bold in conjectures, which I leave to every man's judgment.

^a Lib. 1. tract. de exceptionibus, cap. 12. p. 409. b.
lib. 1. cap. 17. §. executor.

^b Idem. fol. 407. b.
^c Ad tit. de testam. c. statut. verb. ecclesiast. libertat.
^d C. de natur. liberis. l. 2. matr. & authent. 19. &c.

^e Register. orig. fol. 48. &c.

^f De epis. & cler. l. nulli. 28. & l. si quis

^g Fleta



OF THE

Disposition or Administration

OF

INTESTATE GOODS.

CHAPTER I.

In whom it was in the time of the Saxons.

IN the Saxon times it was in the lord of him that died, (understand the chief lord) in case the intestate were a tenant, and died at home in peace: but in case he were no tenant, or died in his lord's army, then it was (it seems) as other inheritance, under the jurisdiction of that temporal court within whose territory the goods were. This may be proved out of the laws of that time, which ordain, that upon the death of an intestate, (whom they call cybeleaze,) the lord^a is only to have the heriots due to him, which are also appointed by^c the laws of the same time, *that by his* (the lord's) *advice or judgment his* (the intestate's) *goods be divided among his wife and children, and the next of kin, according as to every one of them of right belongs*, that is, according to the nearness of kindred, if no children or nephews from them be; for it must, I suppose, be understood, that the succession was such, that the children excluded all their kindred, and of their kindred the next succeeded, according to that in *Tacitus*^e of his *Germans*, whose customs were doubtless mixed with our *English Saxons*, *Haeredes*, says he, *successoresque sint cuique liberi, & nullum testamentum*. But it seems, christianity afterward brought in the free power of making testaments amongst them, *si liberi non sunt, proximus gradus in possessione, fratres, patru, avunculi*.

But this is expressed only in case the tenant died at home and in peace; for if he died in his^b lord's army, both the heriot was forgiven, and the inheritance both of goods and lands was to be divided as it ought, which was, it seems, by the jurisdiction of the temporal court, within whose territory the death or goods were; for in that case, it is not said, that the lord's judgment was to be used, but that the heirs should divide all; or, as the words in the Confessor's law are, *habent*^h *haeredes ejus pecu-*

niam & terram ejus sine aliqua diminutione, & recte dividant inter se; where the right of the heir both to lands and goods is expressly designed, but the judge that should give it them not mentioned. Therefore it seems, it remained as other parts of the common law, under the temporal jurisdiction, as by theⁱ civil law it is under the *praetors*.

CHAPTER II.

In whom after the Normans until king John's time.

UNtil king John's time it seems the jurisdiction over intestates goods was, as of other inheritance also, in the temporal courts; yet no sufficient testimony is found to prove it expressly; only when the common laws of those times speak of intestates, they determine the succession by like division as those of the Saxon times. In laws attributed to *William I.*^k we read, *Si homo moriatur sans devise, si departent les infants l'erite inter sei per ovell*. And afterwards in *H. I.*'s^l laws, *Si quis baronum vel hominum meorum praeventus vel armis vel infirmitate pecuniam suam nec dederit, nec dare disposuerit, uxor sua, sive liberi, aut parentes, & legitimi homines sui pro anima ejus eam dividant, sicut eis melius visum fuerit*. Here is the first mention, as I remember, of any thing occurring in our laws or histories, of the disposition of the intestates goods, *pro anima ejus*, which indeed might have been fitly subjected to the view at least of the church. But no mention as yet being of any ecclesiastical power that tends that way, I rather think that heretofore no use or practice was of administration committed, direction given, or meddling with the goods, by the ordmaries; but all was by the friends or kindred *juxta consilium discretorum virorum*, as the words are in^m the

^a Canuti, leg. cap. 61.

^c Ejusdem leg. cap. 61.

^e De moribus Germanorum.

^k Canuti, legibus, cap. 74.

^b Leg. Ed. Confess. cap. de heretochia.

^h ff. tit. de bonorum possessione.

^l Adjunctum Inghelpho Crolandensi m.

in bibliotheca Constantiniana.

^g Apud Math. Paris.

^m Will. Neubrig. hist. l. 1. c. 25.

statutes

statutes made for such as should die in the holy war with Richard I.

Neither doth that of *Glarvill*, which was written under H. II. tell us of any thing of the ordinary's power in this case, although it hath express mention of testaments, and the churches jurisdiction of them. Indeed we there find, that if no executor be named, then *propinqui & consanguinei testatoris*, take upon them the executorship, and sue in the king's court against such as hinder the due payment of legacies; which also agrees well enough with that before cited out of the laws of H. I. Neither is there in *Gualter Mapes* his *apocalypsis* (being a bitter satire against the abuses of the spiritual courts in Henry II.'s time) nor in *John of Salisbury's* epistles, that have many particulars of the exercised jurisdiction of the church, any thing occurring, that touches upon any ecclesiastical powers of this nature.

C H A P. III.

In whom after the time of king John.

BUT in that charter of liberties both for the church and laity made to the baronage of England in the seventeenth of king John in *Reinmead*, an express ordinance is, *that if any freeman died intestate, his charters were to be disposed of by the hands of his next of kin, by the view of the church, that is, direction and advice being thereto given by the ordinary, as I understand, saving to all creditors their debts:* The words of it were, *Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquerum, parentum, & amicorum suorum, per visum ecclesie distribuuntur, salvo unicuique debitum, quae defunctus eis debebat.* That charter of king John is almost the same syllables with the common one that we now use, by the name of the *grand charter* of 9 H. III. exemplified by the king's patent of 28 E. I. But this of intestates, and two or three other chapters for the subject's liberty, are more in that of king John's, than is found in the exemplification of 28 E. I. However *Matthew Paris* and *Roger of Wendover* when they speak of H. III. granting it, so refer their readers to this of king John, that they tell us, that that of H. III. was the selfsame in every particular; and therefore omit the repetition of it. And indeed, although in the common printed *magna charta* of H. III. and in the roll also of 28 E. I. in the tower, where the exemplification is, this ordinance touching intestates be wanting, yet in very many of the antientest manuscripts of the old statutes, that of H. III. hath the same words as we have here transcribed it from king John's, and that in the same place of his charter as that in king John's, that is, between the the eighteenth chapter, *Si quis tenens, &c.* and the nineteenth, *Nullus constabularius, &c.* And it is to be understood, that the great-

est prelates of the clergy of that time, as *Conterbury, London, Winchester, Pandulphus* the pope's nuncio, the master of the *Temple*, and divers other bishops were on the king's part, when that of king John was granted. And it is probable enough, that when they saw that a charter of liberties must of necessity be granted to the baronage, they so wrought also, that they might insert this one for the advantage of their episcopal government. And they had good colour to think and persuade, that some such thing was fit for them, in regard it was now clearly taken, that some distribution was to be made *pro anima intestati*, the care of souls being the chiefest part of their common pretences for increase of their power and greatness. And hence I suppose, it soon came to pass, that the next of kin had the power of disposition committed by the ordinaries, and that in letters or otherwise, by virtue of that *per visum ecclesie*, which was, I think, the textual ground of right of committing of administration by the clergy. This of king John's being iterated in H. III.'s charter (however omitted in the exemplification) was it seems that provision spoken of in cardinal *Othobon's legatus*, *Proinde super bonis decedentium ab intestato* (so are the words) *provisum, quae olim a praelatis regni Angliae cum approbatione regis & baronum dicitur emanasse, firmiter approbantes, districte inibemus, ne praelati vel alii quicunque bona intestatorum quocunque modo recipiant, vel occupent contra provisionem praedictam.* What provision is it more likely that this was, than that of the *grand charter* both of king John and H. III. And the words *a praelatis dicitur emanasse*, justifies what we have conjectured of the purpose of the prelates, when they saw they could not but yield with the king, to an establishment of laws, by that charter, made indeed in a parliament of that age. The same I suppose that which is meant in the constitution of archbishop *Stratford*, where it is taken for granted, that the church's power of disposition of intestates goods *pro salute animarum & in pios usus*, was a thing *consensu regio, & magnatum regni Angl. tanquam pro jure ecclesiasticoquo libertate ab olim ordinatum, &c.* Where *Lindwood* modestly confesses, that he could not find in what king's time this ordinance was made. But *Johannes de Athona*, upon that of *Othobon*, though he rightly calls that provision, *provisio parliamentalis*: yet most ignorantly and ridiculously tells us, *that the provision there understood, is the statute of Westminster, 2. cap. 21. cum post mortem*, which he makes also to have I know not what reference to the statute of *Glocester*. But this slipped from him either in a dream, or through the utmost neglect of those infallible characters of truth, that the denoting of times affords us. For that *legatus* of *Othobon* was made in *London* in '53 H. III. and at such

* *Glarvill*, lib. 7. cap. 6.

† Reperiuntur scilicet scriptis exemplaria illius diplomatis, & penes Marti. Paris, Rogerum Wendover. ms. & Thom. Ruchburne mss. extant sed in archivis non extant.

‡ Cap. cum mortis incerta.

§ Athona ad le. tit. Othobon. c. cum mortis incerta.

¶ Praeter annales, uxor. Lindwood tit. de consuetudinibus, c. quia incertum est verò, Othobon.

time as that provision was yet extant in the *magna charta*, used by our lawyers. But the statutes of *Westminster* the second, and of *Glocester* were under E. 1. the one in the sixth, the other in the thirteenth of him; How then could *Othobon* think of it in his *legatin*, or could *John de Astona* have thought so, if he had allowed the tide of his gloss, which supposes in the point, that the constitutions of *Othobon* were published in the year 1248. which had it been in 1268. had agreed with truth? But doubtless the numeral letters of MCLXVIII were transposed into MCCXLVIII. and thence only that error.

C H A P. IV.

How that so granted by king John's charter in parliament hath continued in practice.

AFTER that law of the seventeenth of king *John*, it seems the next of kin disposed of intestates goods by the testimony and direction of the church; for so *per visum* denotes. As we see in *per visum proborum & legalium hominum* in writs of summons, and the like. But I have not seen any practice of it testified in king *John's* time. And under H. III. however it were omitted in his charter at the exemplification, the same *visus ecclesiae* continued; so says *Bracton* " that then lived, and was a judge of that time; *Si liber homo intestatus & subito decesserit, dominus suus nil intromittat de bonis defuncti, nisi de hoc tantum, quod ad ipsum pertinere, (sc. quod habeat suum heritor.) sed ad ecclesiam & amicos pertinebit executio bonorum.* Yet it seems also, that (notwithstanding the right of the church thus ordained, and the succession of next of kin so included in the ordinance,) both the lords in some places, according to their former right, still usurped some power over the disposition of intestates goods, against the will of the ordinaries; and on the other side also, the ordinaries, instead of giving direction for a true disposition of such goods, got possession of them, and committed them often, or at least too great a part of them, to the use either of themselves, or of the church, and so defrauded those to whom, by the right of natural succession, they pertained. For that of the lords, *Bracton* his noting it as a thing denied them, compared with what we find among articles granted in the synod of *London* held under *Boniface* archbishop of *Canterbury* in 42 H. III. proves it. Item, *quod mortuo* (so is the " article) *laico sine testamento, non capiantur bona ipsius in manus dominorum, sed inde solvantur debita ipsius, & residua in usus filiorum suorum, & proximorum indigentium, pro salute animae defuncti, in pios usus per ordinarios committantur, nisi quatenus fuerit domino suo obligatus.* Here we see by the way plainly, that the distribution in *pious usus*, was the devising them among the next of kin, according to their nearness and want; not an employing them to

other uses, at the ordinary's arbitrary disposition. But also that the ordinary did in this age sometimes usurp the goods of intestates against the next of kin, is enough proved out of that *legatin* constitution of *Othobon, cum mortis incerta, &c.* where it was ordained as you see before; so in the words of it, that they should not dispose of them otherwise than according as that grant was in the grand charter; that is, to the benefit of the next of blood. But the ordinaries had about this time, against the intent of that charter, so abused the right of succession, that it was related " for a constant truth, that the custom in *Britannia* was, that *tertia pars bonorum decedentium ab intestato in opus ecclesiae & pauperum dispensanda, &c.* as *Innocent IV's* words are, who lived and wrote in the time of H. III. What other ground, than the ordinary's ill dealing with the next of blood, was for that *tertia pars*, I conceive not. Unless the pope had some such other testimony touching it, as we find in an old manuscript volume, titled, " *statuta synodorum*, written in an hand of near seven hundred years since, being a collection out of the fathers and old councils, made, as it seems, by some *Briton* or *Irishman*, as we have elsewhere conjectured. In that *statuta synodorum* occurs, *Orig. in lib. de haereditibus. Pater moriens det tertiam partem filiis, & tertiam Caesari, & tertiam ecclesiae. Si non habuerit ecclesiam, det pauperibus, & si non habuerit Caesarem nec ecclesiam, dividat inter filios & pauperes.* But what author this is cited out of, I am equally ignorant, as I know not at all who was the author of the whole collection, or whence he had many other of his authorities. And other things that volume hath out of some old synod of *Ireland*, which makes to our present purpose, if the canons of that synod had been at all binding in this state. And it was no such wonder, that some such practice might be under H. III. for since also, in the time of E. III. the church so usurped in their jurisdiction of probates, that they made the executors wait on their officials at uncertain and remote places, and then also put them, at times, to the ransom of the fourth or fifth part of the testator's goods, before they would give them probate; which was complained " of in parliament amongst the grievances of the commons.

C H A P. V.

Of that of bona intestatorum in manus domini regis capi solebant.

FOR that of *bona intestatorum in manus domini regis capi solebant*, for which is cited " the close roll of 7 H. III. rot. 16. it is also most true, if rightly apprehended. All that appears in the record is, that the king wrote to the sheriff of *Lincoln*, that *constat nobis per inquisitionem nobis missam sub sigillo Stephani de Segrave, & aliorum proborum & legalium hominum, quod Richardus filius Dunae non obiit intestatus*, and therefore he commands, that the

" *Bracton* lib. 2. de acq. rer. dom. cap. 26. sed. 2.

ms. an. 1257.

haereditatis.

" Rot. parl. 21 E. III. art. 51. & consule.

case apud v. cl. Ed. Coke part 9. fol. 38. b.

" In annal. Burtonensis coenobii pener v. cl. Thom. Allen Oxoniens.

c. ad apostolicum.

" Ms. in thesaur. Coronariano. c. 31. de distributione

cafe apud v. cl. Ed. Coke part 9. fol. 38. b.

" *Hentlow's*

sheriff should deliver all the goods of the said Fitzdune, in *manus nostras capta*, to the prior of Noketon, and others his executors, *ad faciendum testamentum*: neither are there any words that tell us of any *capitales*, or that these were taken in regard of dying intestate only. Indeed it appears not sufficiently in the writ, why they were taken; but it is most probable, that the seizure was for some debt due to the crown from the intestate, which afterward not appearing, or being satisfied, or it appearing that the executors by the taking upon them the execution of the testament, would subject themselves to the payment of it, it was fit enough to remove the king's hands, and deliver all over to the executors. He that well considers the statute of *magna charta*, cap. 18. *si quis tenens*, and compares it with that of *Bracton*, where he tells us, that the law was clear, that if any man died indebted to the king, the sheriff might *imbreviare*, & *attachiare* *castalla defuncti*, will soon see the probability of this, howsoever the words of the statute are only of the king's tenants. And it concludes also, as if it were only in case of the death of a testator, in regard of *relinquatur executoribus ad faciendum testamentum defuncti*. But plainly, that *ad faciendum*, &c. hath equal reference to the intestates as to testators: for no name of an administrator being then usually known, all were called executors that meddled with the intestates goods; and those executors were *executores qui faciebant testamentum*, that is, which instead of the intestate did take such order after his death with his goods, as they thought he would have done if he had made a testament. Which may be conceived also out of the use remembered in that time, wherein sick men being unable, neither having time to express their meaning, chose out some friends that might be *super hoc expressores & executores*; which friends appointing of legacies (as if the intestate had given them) and making disposition of intestates goods, were as testaments of those intestates; and they did truly, as executors, *facere testamentum defuncti*, in which sense it might be spoken of any executors or administrators that intermeddled in those times. And many writs occur in the close rolls of king John and H. III. that have expressly in them the moving of the king's hands from the goods of the dead, when the seizure had been only for the debts to the crown, according to the statute of *magna charta* (which in substance is the law at this day) and *Bracton*. By reason whereof I see not cause enough, why we should understand that of 7 H. III. to prove any such thing, as a custom of the king's disposing or seizing of the intestates goods, especially in regard that in the passages of the law, lawyers, and records of that time, no mention is of any thing that affirms it to be a custom, or touches it as a common use.

But admit that in Fitzdune's case it had been so, that the taking of the goods into the king's hand, had been because of his dying intestate only. It may therefore be accounted rather as a particular of the irregular practice of that time, than any example to prove a custom. And whosoever is but acquainted with the course of the records of king John and Henry III's time, must soon see writs enough that agree not so much as with any settled course of law, but taste rather of some sudden or arbitrary course of granting them. Indeed some two years before that of Fitzdune, there is an example in *Bedfordshire*, that might seem more fully to prove what is collected out of the other. The writ is thus, *Rex vicecom. Bedford. salutem. praecepimus tibi quod blada & catalla quae fuerunt Roberti de insula & Rossiae uxoris ejus defuncti. in Waball & Brokeberge arefari facias & salvo custodiri, donec discussum fuerit in curia nostra ad quem catalla illa pertinent, & aliud inde praecepimus*. But this is often enough seconded with other examples that have for the most part a mention of the defunct's debts to the crown, that it cannot otherwise be understood, but either as founded upon that law of seizing upon the goods for debt to the crown by prerogative, or as an example (amongst many of other kinds) that discovers a more arbitrary course sometimes in proceeding, than later time hath permitted. And according to one of those ways (but the first, that is upon the statute of the grand charter is the fittest and most probable) must that also be interpreted, where H. III. sends a writ to the sheriff of *Rutland*, to command him, that notwithstanding that *Robert de Wesson*, a parihioner of *Wesson*, were drowned, and died intestate, he should yet *facere Willielmo de S. Lando* (that is, to the parson of the parish) *habere nomine ecclesiae suae id quod ad eum pertinet, habendum de catallis quae fuerunt praedicti Roberti, secundum consuetudines partium illarum*: that was for the mortuary, which properly and under that name, then was determinable in the spiritual court.

But surely we must conclude, that if there were any such practice by the officers of the crown in the time of H. III. to seize intestates goods generally, it was not so much the law of the time; for if so, the records could not be but as full of examples of it, as the time was of the death of intestates, which questionless were very many; But some such temporary usurpation, as in 31 H. III. pope Innocent IV. here had for a while executed by his ministers, the *Franciscans* and *Dominicans*, in not only getting into his own hands, but also to his own use, all the goods of the clergymen that died intestate, through *England*, which, as *Matthew Paris*,⁶ that then lived, relates it, *cum audisset dominus rex, detestans Romanae curiae augmentum & multiplicem avaritiam, hoc fieri pro-*

⁵ Bracton. lib. 2. de acq. rerum dom. cap. 16. § 2. peritos, videlicet Zebolum prae. episcop. verbi. legimus. §. 8. ubi de pontificia constitutione de immediatis edit. Londinens. memb. 8.

⁶ Matth. Paris. fol. 159. edit. Londinens.

⁷ Ita facere testamentum nomine defuncti sumitur apud canonici juris

⁸ Mos ille reperitur apud North. Paris. histot. major. pag. 981.

⁹ Claus. 4 H. III. part. 2. memb. 1.

¹⁰ Claus. 17 H. III.

bibuit, comperiens illud ad damnum regni & suum redundare praejudicium. Afterward in the time of *Ed. I.* it appears by the statute of *Westm. 2. cap. 21. cum post mortem, &c.* that the goods of intestates did come *ad ordinarios disponenda*; which agrees with that of *Bracton* before cited, and iterated in the same syllables in *Fleta*,^b which was written under *E. I.* and the disposition of intestates goods was enquired after in those days^c amongst articles of ecclesiastical jurisdiction. And afterwards by the statute of *31 E. III.* the ordinary was compelled to commit the administration of intestates goods to the next of kin. After which statute the name of *administrator* was common as their office; and by that name such to whom the ordinary committed were sued, although be-

fore that time they were sueable by the name of^k executors, and perhaps also by the name of *administrators*:^l But that name is scarce found (as I think not at all) given a defendant to an action brought before seven years after the statute of *31 E. III.* And in the parliament rolls of *17 E. III.* the administrators are designed only by the *ceux que sont per l' evesque ordinez en lieu des executors*, where a petition is offered^m by the commons, that such might have the like actions as their intestates; But the king answers, *Quant a ceux qui devient intestate le roy voet que l' evesque eis action en tel case depuis que il doit responder as autres.* But from that of *31 E. III.* saving only the alteration by *21 H. VIII.* the law hath continued uniformly to this day.

^b *Fleta*. l. 2. c. 47.

^c Quod videtur est in cro. Wigorn. ecclesiae in biblioth. Cont. sub initio E. I.

^k *38 E. III.* fol. 21.

^l *Vide* *34 E. III.* fol. 54. sed & plura in *vir. cl. E. Coke*, par. 5. fol. 82. & par. 9. f. 59. & 40. & *19 Ed. III.* cit. *croicant*, 24.

^m *Quindena* *Falch.* *17 E. III.* artic. 10.



A
L E T T E R

T O

Mr. Augustine Vincent,

Rouge-Croix, pursuivant of arms, concerning his
Discovery of Errors.

V O L. III.

10 K

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My singular good FRIEND,

Mr. Augustine Vincent.

YOUR favour, Sir, in sending me your sheets, as they were done off, not only gave me the benefit of an earlier instruction, but made me willing also, thus far, to return you my censure. Had you travelled only through the common road so over trodden by the quiet patience of vulgar fancies, bred first by easy belief, and still retained for want of accurate examination, I had utterly declined it, otherwise I must either have taxed you, or, against mine own heart, flattered you. I shall now do neither; your journey herein hath been through the right way to truth; and although it be indeed a very rugged one, *dumos inter & aspera*, yet you pass in it happily. So familiar have you made it to your self, by the frequent use of it! Your guides appear to have been exceeding *industry* in reading, and curious *diligence* in observing, not only the published authors which conduce to your purpose; but withal the more abstruse parts of history which lie hid, either in private manuscripts, or in the publick records of the kingdom. In your helps taken from published authors, you shew both a full store of them, and a judicious choice in the use of them. And the manuscripts that have herein been turned by your hand, are a singular testimony of your careful inquiry before you resolve, and how far you are from being tainted with that lazy heresy of some, who must of necessity allow the compositors and press-men for the best authors, while they think nothing worthy the reading, but what is printed. As if the press gave first authority to whatsoever hath been written, and justly denied it to all books until they had past there! You know what a deficiency must thence come into the knowledge of history, (whereof your corrections are a part) and much more I think into the knowledge of the history of *England*, than of any other state whatsoever; for such antient pieces of the history of other states, as being worthy of light, were preserved only in written copies, are of late for the most part made publick by divers learned men, that have vouchsafed their labours in giving further light in that kind of learning. But for *England*, howsoever we have indeed in print, some good and

select old authors of our story, through the benefit of a few worthy men that have affected that way to appear beneficial to their country; yet the number of our historical materials, which being of singular use, remain still only in manuscript, makes them all that are publick seem little more than as a handful well gathered, where there might be a plentiful harvest! As it is plain by that great store, in those so well furnished libraries of Sir Robert Cotton, and of *Bennet college* in *Cambridge*, besides divers of singular worth in his majesty's libraries at *St. James's*, in that of the archbishop of *Canterbury*, of the earl of *Arundel*, the publick one at *Oxford*, with Mr. *Clarencieux's*, Mr. *Allen* of *Gloucester-hall*, and in some other libraries of less note in *Oxford*, *Cambridge*, *London*, and elsewhere in this kingdom. But your diligence this way appears full, in the use, especially of Sir Robert Cotton's, wherein almost nothing of this kind is wanting that may be had in any of the rest, and the plentiful store of it is (as his humanity in communicating) absolutely incomparable. For your so often taking help from the records, or publick acts of the state; you have therein as well taught the right way, for such as shall collect a store for the new writing of any part of our story, as in this particular, to so good purpose, gone through it. Those publick acts are a just touch for the trial, and a large treasury, for the increase of what we receive in our common histories, as well of the later as elder times. For, except only the annals of queen *Elizabeth*, and the life and reign of king *Henry VII.* lately set forth by learned men of most excelling abilities, we have not so much as a publick piece of the history of *England*, that tastes enough either of the truth or plenty that may be gained from the records of this kingdom. And amongst the old monks, who have left us our best annals of the more antient time, there are but very rare examples of any use of them. Only, and I remember, in *Henry of Knibbrou*, a canon of *Leicester*, and in the author of a very good ms. annal in the university library at *Oxford*, beginning in the year *mccclix.* and ending in *Henry V.* it appears that they had a special care to be informed from some
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parliament rolls of the times of *Richard II.* and *Henry IV.* Neither have I met with another among them that deserves so much praise that way. But whatever our own country men have herein performed; there is sufficient example also for direction to this kind of use, of records, or publick acts, in the best historians of other states. *Polybius, Livy, Suetonius, and Tacitus*, made special use of the publick tables and records of *Rome*, and thence have they their most certain materials, which were preserved (as ours, chiefly in the tower, and the rolls) at their temple of the nymphs, and at that of liberty, on the *Aventine*. *Thucydides*, it appears, did so in his *Greek* history. And in the later times, the diligence of *Sigoni*, in his *de regno Italiae*; and of *Mariana* also, it seems, in his *Spanish* history, hath been, in this course, singular; as also of *Cherubino Ghirardacci* his history of *Bologna*; of *Prudentio de Sandoval*, in his additions to some old writers of *Spain*; of *Francisco de Piza*, in his history of *Toledo*; of *Melchior Goldastus*, in his plentiful collections out of the records of the empire; of *Augustine du Paz*, in his genealogick history of the duchy of *Bretagne*; of *Gilles Brie* in his history of the earls and dukes of *Alençon*, of *G. Herzart von Hohenburg*, lord chancellor of *Baviere* against friar *Bzovius*; besides some others that occur not. But what a world of historical matter both of our church and state, lies hid in the records kept in the several offices of the exchequer, in the tower with you, in the chapel of the rolls, in the paper chamber, (which is also an office of records of state) in the journals of parliament, in the registers of the archbishop of *Canterbury*, *Winchester*, *Lincoln*, and in some other places of obscurer name, whereof there is not so much as any memory in our common histories. In *France* also, they have an exceeding number of records of what passed between the *English* and *French*, from the time of our king *Stephen*, and their *Philip I.* which falls about *MCLXX.* until our *Edward VI.* and their *Henry II.* as they are noted by *du Tillet*, with direction to the several bags and boxes wherein they are kept. Of many of them we have doubles here in *England*. But doubtless *monsieur du Chesne*, might have made such use of them in his late history of *England, Scotland, and Ireland*; published in *French*, as that both his diligence (which yet deserves thanks) might have seemed much greater, and we also might have been satisfied in more particulars of those originals, which *du Tillet* hath remembered by the general heads only. And to labour with the fancy of a fairer language, or better order for the composition of our story, or any part of it (as divers have done) without the careful searching of these kind of helps, is but to spend that time and cost in plastering only, or painting, of a weak or poor building, which should be employed in provision of timber and stone for the strengthening and enlarging it. But for yourself, Sir, not only your choice, but your employments

drew you to the use of such records, as concern this historical draught of succession, in the greater nobility. And the many passages which you rectify by them, besides your intention of such as are of singular moment also to other purposes, are a most copious testimony, as well of your industry and judgment, as of the worth and usefulness of them in general.

Thus much for my censure. But also as I passed through your sheets, I thought of somewhat that is not unfit perhaps here to note to you. You have judiciously brought in the example of Sir *John Talbot*, his being lord *Liste, ratione dominii & manerii de Kingston-Liste*, to prove that a legal seisin of a lordship, territory, or castle, as of *Arundel* castle, may be a sufficient and necessary cause of a dignity in the person that is seised of it, although regularly it be otherwise with us. See *11 Hen. IV. fol. 1.* and *Statham in tit. parliam. 1.* But also in the ecclesiastical barons, or lords spiritual of this kingdom, especially before the dissolution of monasteries, there is a most full testimony that justifies as much. For it concerns me something to maintain it, having long since published the parliament rolls to this purpose for *Arundel* castle, and affirmed it. Plainly those abbots, who with their successors in ancient time were constantly barons of parliament, were all, or were legally supposed to be so, only by reason of their seisin of whole baronies, or of lands held *per baroniam*, which were the bodies of their baronies. For although every not exempted abbot, with his convent (by a procurator for the convent) had place in the convocation of the clergy, yet none of them, beside such as held baronies, had a continuing and settled right to place in the upper house of parliament. So the abbot of *Westminster*, of *Gloucester*, of *Saint Albans*, of *Bury*, of *Abingdon*, divers others, by reason of their baronies, were parliament lords; which is enough justified by that of the abbot of *Leicester*, who was discharged by *Edward III.* his patent granted to him, and his successors, from coming or being called to any parliament, by reason chiefly that he had not a whole barony, or held not *per baroniam*, as it is with you in *rot. parli. a. 26 Ed. III. part. 1. mem. 22.* The abbot of *Leicester*, to whom that grant was made, by *Ed. III.* was *William de Cloune*, who is upon this occasion remembered in *Henry of Knighton*; *Cartam quoque, scilicet, de non veniendo ad parlamentum pro se & successoribus suis de rege adquisivit*; which is not enough intelligible without the roll, that fully expresseth the reason of it. To the same purpose, is that most observable example of the abbot of *Saint James* by *Northampton*. He was summoned to the parliament at *Tork*, in *12 Ed. II.* and being sick, makes one *Henry of Blyfeworth*, a canon of his house, his proxy in parliament. The proxy coming up, goes first to the chancery, to enquire there whether his lord were summoned, *per simplex breve, or per regisrum cancellarie* (as the relation is made by the proxy himself,

self, in the lieger of the abbey, fol. 222.) and there he finds, that of late this abbot's name had been entered among the spiritual lords of parliament; whereupon he makes suit to the master of the rolls, to raze out the name, *deficit nunquam antea irrotulatum fuit, & deficit idem abbas nihil tenet de rege in capite, nec per baroniam, sed in puram & perpetuam elemosynam.* But the master of the rolls justly refused to do it. The proxy therefore, considering with himself, that if he either appeared in the upper house to excuse his lord, according to his letters of proxy, or offered these reasons there, to shew he should not at all appear, he might prejudice the abbot, (for an excuse for sickness had admitted him a lord of the parliament; and, the king having sent for the abbot by writ, he could not in the house avoid appearing, either in person, or by proxy) first purposes to exhibit his bill to *Thomas earl of Lancaster*, high steward of *England*, shewing him that his abbot's name was lately inrolled in the chancery, among the spiritual lords, *que sunt summons* (so are the words in the bill that he had drawn) *per la reson quils teignent en chief du roy ou per baronie*, and that his abbot neither held in chief, nor by barony of the king, concluding with a petition, that he would be pleased to take order that his name might be razed out, and himself for the present excused. But upon better advice, apprehending that this course might give some distaste to the lord chancellor, being then *John de Hotkam*, bishop of *Ely*, and the master of the rolls, who might cross him in his purpose, he exhibits a bill in the abbot's name to the lord chancellor in these words: *Abbas sancti Jacobi extra Northampton, irrotulatur de novo in cancellaria domini regis inter citandos ad parlamentum, & non tenet per baroniam, nec de rege in capite, sed tantum in puram & perpetuam elemosynam, & nec ipse abbas, nec predecessores sui, unquam in cancellaria irrotulati fuerunt, nec ad parlamentum citati: hic usque, unde idem abbas petit remedium:* To which bill the answer and decree was, that *dominus cancellarius, cum suo consilio de cancellaria, ordinavit quod nomen praedicti abbatis a registro cancellarie deleteretur*, as the relation says, *& ita pluribus circumspicit idem abbas est absolutus.* But his name remains yet in the back of the close roll, where the summons to that parliament is entered, *dors. claus. 12. Ed. II. membr. 11.* But for that which he spake in his bills of a tenure in chief, I understand not why he used it, more, than because he would make him clear of any tenure that was temporal. For a tenure in chief alone was not cause enough of being a lord of the parliament. And howsoever all temporal lords of parliament with us now derive their chief original, either from creation by patent, or summons by writ, yet unless it were the abbot of *Tavistock*, to whom *Henry VIII.* (in *Richard Banham* being then abbot) granted for ever, *quod sit unus de spiritualibus & religiosis dominis parliamenti,* I

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find not that in the elder times, any of those lords spiritual, had other original, of their being constantly barons of parliament, than solely from their seisin of baronies. That of *Tavistock*, is in *rot. pat. 5 Hen. VIII. part. 2. mem. 22.* And plainly those parliament abbots, and the prior of *Coventry*, and of *St. John's*, sat not in parliament, because they were abbots and priors, (for so every abbot and prior might have challenged a like dignity) neither was the being mitred, or exempt, the cause of their right to place in parliament (as some seem to have mistaken) but because they were tenants *per baroniam*, and thence barons; as also upon like reason only, even in the first parliament of queen *Elizabeth*, the abbot of *Westminster* sat. The same might be said of the antient bishops which were before *Henry VIII.* of whom those passages in *Stamford, lib. 3. cap. 1.* and in *7 Henry VIII. Kelway, fol. 184.* in the case of doctor *Standish*, are to be understood. And when all the bishops and parliamentary abbots, and priors of the province of *Canterbury*, protested for the right of pairalty in the parliament, upon their absenting themselves, when the proceeding was upon the appeal brought by *Thomas duke of Gloucester*, and others against *Alexander* archbishop of *Tork*, *Robert de Vere* duke of *Ireland*, and others, under *Richard II.* they altogether affirmed, that *de jure & consuetudine regni Angliae*, all bishops, abbots, priors, and other prelates whatsoever, *per baroniam de domino rege tenentes*, were peers of the parliament, and from that tenure by barony (which *Matthew Paris* and *Roger of Wendover* say, *William I.* began amongst them) they challenge their being barons; as you may see in *rot. par. 11 Rich. II. part. 1. mem. 2. art. 34.* and with that *Camden Brit. pag. 123.* and in the *English, pag. 170.* But also there is a singular testimony of *11 Hen. II.* to this purpose in a ms. life of *Thomas Becket* archbishop of *Canterbury*, written by *William Fitz-Stephen*, a monk of *Canterbury* in *Becket's* time. The archbishop being accused before the whole baronage of *England*, or the *generale concilium* of the barons, at *Northampton*, which were summoned thither as lords to the parliament, by the king's writ or proclamation, as it seems, of an injustice done in his court baron of *Pagham* in *Suffex*, and also of his contempt in not appearing, nor excusing his appearance, having been called by the king's process to his answer; the court (himself being now present, after due examination of the cause) found him guilty, and resolved that he was to be censured with no less than the forfeiture of his whole personal estate. But indeed this part of his case is variously reported by *Gervasius Dorobornensis*, *Roger of Hoveden*, *Matthew Paris*, the author of *Quadriologus*, and the rest that have written his fortunes. However, they all agree that he was censured. But, saith *Fitz-Stephen*, there was a great difference among the lords, whether the sentence should be given from the mouth of a spiritual or of a temporal lord. The

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temporal lords declining the pronounciation of the sentence, for fear (doubtless) of the pope's against them; and upon the like reason, questionless, the spiritual lords. But the spiritual lords, in the disputation, professed that they were there only as barons, and under that name were peers in the judgment, and not as bishops; which infers, that their pretence of their being barons, was from their possessed baronies, and not from any personal character of the title of baron, in which they were otherwise invested. The words of the author are worthy observation. *De proferendo judicio distantia fuit inter episcopos & barones; utrisque alteris illud imponentibus; utrisque se excusantibus. Aiunt barones; Vos episcopi pronuntiare debetis sententiam, ad nos non pertinent. Nos laici sumus, vos personae ecclesiasticae, sicut ille. Consecratos ejus, coepiscopi ejus. Ad hoc aliquis episcoporum; Immo vestri potius est hoc officii, non nostri. Non enim est hoc judicium ecclesiasticum sed seculare; non sedemus hic episcopi sed barones; nos barones, & vos barones, pares hic sumus.* But at length, the king being displeased with this controverly, Henry of Blois bishop of Winchester, pronounced the sentence against him. And as those bishops generally were barons, by reason of their temporalities, being baronies, so the bishops of Durham are titled *counts de palais*, or *counts palatine*, or *earls palatine* in our books, because in their temporalities, from whence they have this their dignity of earl palatine, as a title annexed, they have a county palatine. See 17 Ed. III. fol. 36. pl. 4. And some conceive that the beginning of it in the bishops of Durham was from Hugh of Pufaz, as if that which is commonly taken for his being made earl of Northumberland, had been only the giving him the territory of Durham as an earldom, and annexing it to the bishoprick for ever, to which purpose read Guil. Neubrigens. *de reb. Anglicis*, lib. 4. cap. 5. and compare it with that monsieur du Chesne hath of it in his history of England. liv. 12. pag. 538. But indeed also in the more elder times, in the dignity of the temporal barons, the regard had to their possessions, being baronies and counties, was a singular cause of their bearing the titles of them. Therefore (although I doubt not, but that also in those elder ages, there were temporal barons of parliament, by the favour of the king's writ only, without baronies, as at this day) *comitatus integer*, and *comes*, and *baronia integra*, and baron, are as *conjuncta* in the grand charter, and in the statute of Westminster 2. cap. 46. where both temporal and spiritual lords are expressed, by their holding of real baronies, in the passage touching the chamberlain's fees at their doing of homage; which (with the rest of all the chapters of that parliament) I have by me in French verse of that age, thus;

*Les chamberlains, le roys
De formes eyent tot voys,*

*Des erceveskes nomenclent,
E des eveskes enstement,
E des abbes, & priors,
E autres des esglises governors,
De contes, e de barons graunx
Entere baronie tenanz,
Renable fin, k' a luy frunt, &c.*

So *Bracton*, lib. 2. cap. 34. supposes, it seems, that a legal possession of the *caput comitatus*, and *caput baroniae*, had always joined with it the title and dignity of earl or baron; and real inheritance only is an earldom in 23 H. III. tit. *particion* 18. See *Camden* also, *Brit. p. 447.* in *Shropshire*, and in his *English* 591. And in some of our later books a barony, or the tenure by barony, is mentioned as the main cause of the dignity. See for that 22 E. III. fol. 18 a. 48 E. III. fol. 30. b. Not to insist here upon that tradition out of antienter testimony, that thirteen knights fees, and one third part, made a barony, and that such a barony made a baron in the elder ages. So *Hugh Poore*, under king *Stephen*, by possession of the county of *Bedford*, was earl of it, having disscised *Milo Beauchamp* of the earldom, as it is in *gesta regis Stephani*, pag. 953. Neither is anything more common than *conferre comitatum*, or to give the body of a county, for the making of an earl, in the old annals of England. And at this day also, the reliefs of earls or barons, are paid according to the grand charter, by the real *comitatus* or *baronia*, and their other possessions, and not with any relation to their titles of mere personal creation; which in this case is most observable. For that matter, there is a singular example in the payment of reliefs, after the death of *Roger* earl of *Rutland*, by *Francis* now earl, his brother and heir, for the several baronies of *Belvoir*, *Hamelake* and *Trusbut*, entered as I remember, in *Trin.* 13. *Jac. Ex part. rememorat. thesaur.* in the exchequer. To conclude. Was not also queen dowager *Adeliza* truly countess of *Arundel*, by reason of her possession of the castle, although her greater name of queen prevented her being called so? All agree she had the castle assigned her for her dower, by king *Henry I.* but also she had the earldom as a concomitant with it. *Adeliza* (saith *Matthew Paris*, pag. 102.) *castellum de Arundel & comitatum a rege Henrico pro dote habebat.* Why did not this make her countess, much more than the grant of the county of *Lincoln* by *Robert of Quincy*, to his sister *Hawise*, made her countess of *Lincoln* under *Henry III*? For *comitatus* referred to a county or shire, may denote the profits without the dignity; but what *comitatus Arundel* can mean other than the earldom and dignity of earl or countess, I understand not; Which is also considerable in that of *Richmond*, being no more in law a county or shire, than *Arundel* is. But *Polydore* and some other take *comitatum* there for the county of *Suffex*, which was called also the county of *Chichester*, as you may

may see in *Sarisburiens. epist.* 15. Divers other particulars might be added; but out of this it sufficiently appears, that nothing is clearer, than that it fully stands and agrees with the antient reason and law of this state, that the seisin of the body of an earldom, barony, or like possession, may be, as in the example of *Arundel* castle, sufficient cause of the dignity in the person denominated from it. To this purpose also, in the most of foreign states, the possession only of *feuda regalia*, or *sahlehen*, as they call them in the empire, as of the bodies of dutchies, counties, baronies, may give the titles of dukes, counts, or barons to the possessors, without personal creation. Of that matter the feudists plentifully enough; you may see *Bocer. de qualis. & different. feud. cap. 3. num. 19. & seqq. Vultei. de feud. cap. 8. Alvarottus, Jacob. de Belviso*, divers others of them; besides *Bartol. ad lib. 1. c. de dignitat. Tiraquell. de nobilitate, cap. 6. Petr. Tritizius de nobilitate ad conclus. 16.* and such more. And it is agreed clearly, I remember, among some foreign lawyers, especially of the empire, that *praelati ratione temporalium dominiorum, quae a Caesare habent, principes vel comites esse possunt*; which is in substance the same which I have said of our abbots and archbishops. For that matter, I refer you to *Andr. Gail. praet. observat. lib. 1. obs. 30.* And the very seisin of abbays in France, antiently gave the title of abbots to some lords and gentlemen, that had them by the king's grant, as it appears in *Aimoinus de gest. Franc. lib. 5. cap. 34. & 42.* So the bishops of *Rheims, Laon*, and the rest of the ecclesiastical peers of France, have their honour of pairalty, from the possessions of their bishopricks. And *John* duke of *Bretagne* created *Sir John de Beaumanoir*, being lord du *Bois de la Motte*, and of *Tremereuc*, a banneret, a *luy & ses successeurs seigneurs des dits lieux*, as the words of his patent are transcribed in *Augustin du Paz*, pag. 721. and the patent was lately allowed and registered in the parliament of *Rennes*. So when the county of *Alençon* was made a dutchy, by *Charles VII.* in the year *mcccxcv.* it was granted to *John* the earl of it; *dictum Joannem consanguineum nostrum & suos in ducatum succedentes duces appellari*; as you read in *Brie* his history of the earls of *Alençon* and *Perche*, *liv. 5. cap. 8.* Infinite like examples are to this purpose; but of this matter here, perhaps thus much is too much. As this I have thought of in your passages touching the earls of *Arundel* and *Suffex*, for an addition to your reasons of so just a conclusion, so in them of *Oxford*, I shall add here three sons at once, which are omitted in the descents of that most noble family. Besides those which are given to *Robert de Vere*, (that was earl both under *H. III.* and *Ed. I.*) and the lady *Alice* his countess; they had *Gilbert, Philip*, and *John*, which being all three together students in the university of *Paris*, were, upon request of the earl and countess, commended to the favour and prote-

ction of pope *Martin IV.* by *J. Peckham*, archbishop of *Canterbury*, about the year *mccclxxx.* His letters of commendation are preserved in his register, and they are the only testimony, as I think, of these sons of that house, and such a one also, as is not without good expression of honour both to them and their family. I have here transcribed them to you.

Sanctissimo in Christo patri ac domino Martino Dei gratia sacrosanctae Romanae ac universalis ecclesiae summo pontifici. frater J. &c. cum filiali reverentia pedum oscula beatorum. Inter magnates Angliae, sancte pater, comes Oxoniae & comitissa nobiles genere, nec minus nobiles honestate, morum privilegiis praeclearius resplendentes, tres inter caeteros liberos, Gilbertum, Philippum, & Johannem divinis obsequiis devoverunt in ordine clericatus Parisius jam studentes, qui praedictis suis parentibus non minus moribus quam genere, ut communi testimonio asseritur, se confirmant. Quia igitur plantulae tam eximiae in columnas ecclesiae utiles, juxta consuetudinem sui status, non poterint faciliter excresecere, nisi rore apostolicae benevolentiae clementis irrigentur, propter Militi curas, quibus ipsorum parentes haece nascuntur temporibus pregravari, meam rogavunt sollicitudinem, ut quod oculata fide decideri de praedictis nobilitatis suae filius, vestrae, veraci testimonio, suggererem pietati. Quocirca obsequium altissimo in hac parte pii fructus me parare existimans, ex radicibus bonae spei vobis significo, pater sancte, quod si praedictos pueros idcirco clementiae vestrae privilegiis honorare, aedificabitis Angliae militiam, consolabimini clerum, altissimo parabitur honorem, & plures nobiles animabitur ad studium, & nonnullos ab illicitis beneficiorum ecclesiasticorum occupationibus retrahetis, quibus desperatio nanciscendae apostolicae gratiae occasionem praebuit in talibus delinquendi. Custodiat dominus, &c. Script. nonas Augusti,

Besides also in the earls of *Northumberland*, I find one omitted by all men, which should come between *Walcher*, bishop of *Durham*, and *Robert Mowbray*; that is, *Aubrey* or *Albry*. For in *Turgotus* prior of *Durham*, you shall read, post mortem *Walcheri* episcopi *Dunelmensis*, rex *Wilhelmus* primus dedit comitatum *Northumbriae Albrio*, qui donum *Waltheof* de ecclesiae de *Tinnmouth*, &c. Were there not also earls of *Wallingford* antiently? *Malmesbury hist. novel. lib. 2. p. 104.* says, that *Robert* earl of *Glocester*, went from *Arundel* to *Bristol*, occurrente sibi, medio itineris, *Briano filio comitis de Wallingford*: The same person is afterward mentioned, pag. 105. and called, *Brianus filius comitis marchio de Wallingford*. I conceive this *Brian* to be the same man which is called *Brientius* in that office, cited by *Mr. Camden, Brit. pag. 204.* But this I only offer to your consideration, as what I enough understand not. However, you know, *marchio* was in those ages used sometimes for

comes,

comes, or some other great lord, and not as it is a distinguished dignity, in the later times. As you see in the letters of pope John XV. in *Malmesbury de gestis regum*, lib. 2. cap. 10. where Richard earl of Normandy, is called *marchio*, and in John of Salisbury, his *de nugis curial.* lib. 6. cap. 16. the lords marchers of Wales, are stiled *marchiones*. That Brian is called *Briennus filius comitis*, in *gesta regis Stephani*, in the histories of Normandy, p. 947. and the context both there and in *Malmesbury* may be taken, as if he had been son to Robert then earl of Gloucester. Out of Matthew Paris also, and Matthew of Westminster, I see it is conceived that Baldwin de Ripariis, or Rivers, being earl of Devonshire, was created earl of the isle of Wight by king Henry III. in the year MCCXL. The words of the monk are, *comitatu Vectae investivit*; But is it not most likely, that they meant there only the earldom of Devonshire, to which he was heir? As the earldom of Pembroke was called of Striguil, that of Derby of Tutbury, and other in like fashion; so the earls of Devonshire, being lords of the isle, were called earls of it. It is most sure, that before him, his grandfather William de Vernon, was called also earl of the isle of Wight, as we see expressly in Roger of Hoveden, in Rich. I. pag. 420, lin. 65. And to have a new investiture in those elder times, as a livery to an hereditary earl, is not strange. Neither is the isle of Wight called *comitatus* afterwards, but *dominium*; as you see frequently in the records that concern especially Isabel countess of Albemarle, and daughter to this Baldwin. Nor is any other of his name called earl of the isle, as by a name distinguished from that of Devonshire; and so du Chesne well stiles this Baldwin (speaking of his death) *Baradovin comite de Dens* (meaning Devonshire) *vulgairement dit de l' isle*, hist. 13. pag. 647. In the earls of Chester, to that you speak of Ed. II. his granting of the earldom of Pontieu and Monftruel, to prince Edward (afterward Ed. III.) I add, that this title came first to England through queen Eleanor, wife to Edward I. who was heir to that earldom, so that it was in prince Edward, son to Edward I. as heir to his mother; and he is, I remember, in the register of archbishop Winchelsey, stiled by it in letters directed to him, thus; *Florenti adolescenti nobilissimo domino Edwardo, nato illustris regis Angliæ, principi Walliæ, comiti Cestrie, Pontivi & Montis Trolli*. And for this dignity joined with the crown of England, see especially du Chesne, in his French history, liv. 14. pag. 681. and liv. 15. pag. 756. and Brie in the history of the house of Alençon, pag. 124. liv. 135. That Guichard of Angles made earl of Huntingdon by Rich. II. is, in Thomas of Walsingham, called *Gisardus de Angolismo*, and in du Chesne, *messire Thomas de Angle comite de Hostidune* (for Huntingdon, as Froissart also hath it) which shews both how necessary the rolls are, which you have used, to be sure of the name, and how soon common stories may deceive their readers. So in Monstrelet, Henry (afterwards Henry IV.) is

called *duc d' Herodie*, for d' Hereford, in the alliance betwixt him and Lewis duke of Orleans, which is as ill interpreted by Herefredine for Herefordia, in the margin of du Chesne, pag. 981. So *le comte d' Arli* occurs for the earl of Derby, by a like mis-writing, in the story of monsieur de Boucicant, pag. 65. and *le comte d' Orset*, for the earl of Dorset, in Juvenal's history of Charles VI. pag. 534.

In the viscounts also, I observe to you that the viscounty of Beaumont in France (consisting of divers baronies, as *Fresnay, saint Susanne, Pouvence, Semblancy*, and others) soon after the lord Beaumont was made viscount under the great seal of England, was granted, it seems, to him under the great seal of France by king Henry VI. it being supposed to be forfeited upon a rebellion of John de Valois the second of that name, duke of Alençon, whose father had that viscounty by marriage with Mary, daughter of John V. duke of Bretagne. For the copy of a grant to that purpose (which had been signed by the king) and dated at Shene, 18 Jan. 19 Hen. VI. or 1440. being examined by the original, and written in that time, was by a most worthy gentleman of this family communicated to me. And besides the reasons given in the patent, out of the descents of that lord Beaumont; it is added, that out of the same viscounty, *Nostre dit cousin & ses progeniteurs anciennement, sont extraiz & eulx & lui en ont port de tout temps & encore meismes en porte les armes*. And in substance it hence falls out, that the dignity of our first viscount was thus intended, for feudal or real, as our dukes, earls, and barons, anciently were. But what the forfeiture of the duke of Alençon at that time to the king of England was, I fully enough conceive not, neither is there any thing in our rolls of France that will help. The duke of Alençon was that year in rebellion against Charles VII. king of France; and the French stories, as I remember, suppose him not at all deprived of any of his possessions by either king, until making alliance with the English against the French, he was condemned of treason about seventeen years afterwards. Concerning him and his forfeiture herein, beside the stories, you may see *Augustin du Pass* in his lords de la Guerche, and de Pouvence, and Brie in the earls of Alençon, liv. 5. cap. 8. But also in that copy of the patent (which I say was, if it were at all, under the French seal, because the king's stile in it is, *roy de France & d'Engleterre*) the words touching the forfeiture go thus; *La visconte de Beaumont, &c. confisque envers nostre majeste royale, par la rebellion & desobeissance de Jehan seyr disant duc d' Alençon, laquelle a tenue par don royall seu nostre trefchier & trefaute uncle Jehan en son vivant duc de Bedford, & par son trespasssement retournée a nostre main par reversion*.

And it seems, that it should be understood, that when this John duke of Alençon was taken prisoner by the duke of Bedford, at the battel of Vernucith, Henry VI. king of England, as king of France, had given the duke

of *Bedford*, being regent, this dutchy ; which by the pretence of this patent, continued in him during his life. For also it is certain, that in the records of the house of *Alençon*, there are letters of the duke of *Bedford* with this title, *Jean, regent du royaume de France, duc de Bedford, d' Anjou, & d' Alençon, comte de Maine*, as it is observed by *Giles Brie, liv. 5. chap. 9. pag. 321.* who tells us also, that he stiled himself earl of *Perch*, being another title of the dukes of *Alençon*. This shews, that notwithstanding the exceeding great ransom which the duke of *Alençon* paid for his liberty,

yet his possession were supposed on our part justly seized on by the *English* regent, and among them this viscounty of *Beaumont*, which was since by *Francis* the first made a dutchy also, and a pairy in *Charles* of *Bourbon*, first duke of *Vendosme*, who had the viscounty in marriage with *Frances*, daughter to *Rene*, duke of *Alençon*, being dutchess *Dowager* of *Longueville*. But I weary you with length, and while I have thus freely given you my censure, I may deserve an ill one: I end therefore, only subscribing myself,

From the Temple,
M.DC.XXII.

Your affectionate Friend,

JOHN SELDEN.



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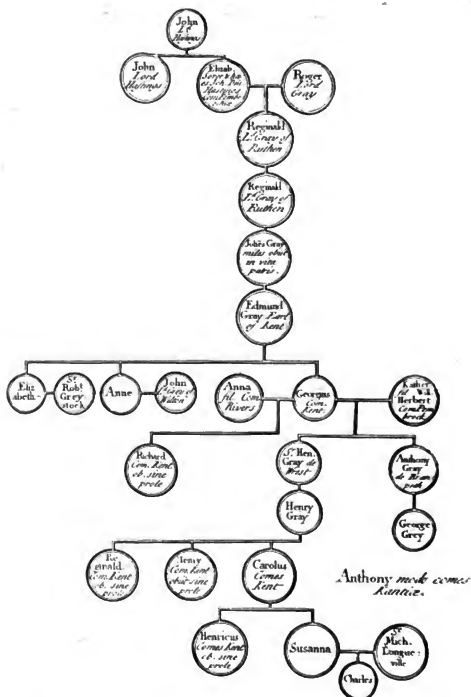
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A N
A R G U M E N T,

Concerning the

B A R O N I E S
O F
GREY and RUTHEN.

A N
ARGUMENT
 CONCERNING
The Baronies of Grey and Ruthen.



*R*oger Grey married Elizabeth, daughter and sole heir of John lord Hastings, and was called to parliament by writ, 18 Ed. II. and died 28 Ed. III. Reginald his son, was summoned to parliament by the name of Reginald de Grey de Ruthen, and died; and Reginald the son of

V O L. III.

Reginald, was summoned by the same name, and had issue Sir John Grey, who had issue Edmund Grey; Sir John Grey died; after Reginald died; Edmund was summoned to parliament 20 Hen. VI. by the name of Edmund de Grey de Ruthen, chivalier. 5 Ed. IV. Edmund

10 N

was

was created earl of *Kent*, to him and the heirs males of his body. He had issue *George*, *Elizabeth* married to *Sir Robert Greylock*, and *Anne* married to *John lord Grey of Wilton*, whose issue continued till of late. *Edmund* died, *George* succeeded in the honours, and had issue by two wives: By his first wife *Anne*, the daughter of *Richard Woodville*, earl *Rivers*, he had issue *Richard*; and by his second wife *Katherine*, daughter of *William Herbert*, earl of *Pembroke*, he had issue *Sir Henry Grey*, and *Anthony Grey of Branspeth*. *George* died, and *Richard* possessed the honours, and sat in six several parliaments, and died without issue. 14 *Eliz.* *Reginald*, son of *Henry*, and grandchild of *Sir Henry*, is declared earl of *Kent*, under which *Sir Henry*, the petitioner, claimeth as heir general, *front &c.* *Anthony*, now earl of *Kent*, claimeth the baronies as heir male.

The question is, whether they belong to the earl of *Kent*, or the petitioner?

The principal question will be, whether a barony by writ, being once involved into an earldom, may be afterwards transferred into another family, by a daughter and heir, and the earldom continue in the male line?

The petition of *Charles Longueville*, cousin and next heir to *Henry* late earl of *Kent*, lord *Hastings*, and *Ruthen Sheweth*,

That *Reginald Grey*, your petitioner's ancestor, whole heir he is, was seized to him and his heirs, in fee and right of the dignity of lord *Hastings* and *Ruthen*.

Prayeth to receive his writ of summons to sit in this parliament.

To this my lord of *Kent*, who is heir male of the same *Reginald*, and of *Edmund* first earl of *Kent*, saith, that the honours belong unto him.

1. He excepteth to the petition as mistaken.

2. If the petition be not mistaken, yet the ordinary rules of the common law, are not to be observed in this case, and if they were generally to be observed, the petitioner nor himself, can have no right.

3. That he hath right to the dignities by the law and custom of honour, and that the law of the land doth warrant his right.

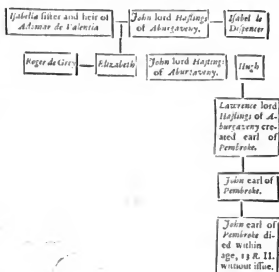
1. The petitioner is mistaken. For whereas the petitioner claimeth the baronies of *Hastings* and *Ruthen*; he saith, that the title of lord *Hastings*, or stile thereof, is inherent in the blood, and was in the blood of *Reginald*, lord *Grey of Ruthen*. But the barony in reality, was the barony of *Aburgavenny*, but he never sat nor was he summoned to parliament by that name. It had been material to *Reginald* lord *Hastings*. For *Aburgavenny*, being a barony temp. *H. III.* and the title and dignity of lord *Grey*, being created by writ 18 *Ed. II.* 109 years after, and the addition of *Ruthen* added 28 *Ed. III.* to *Reginald*, if he had sat as lord *Hastings* of *Aburgavenny*, he had had precedence, and so had the successors of him, if they had sat in parliament by such barony.

18 *Ed. II.* *Roger Grey* was first summoned

to parliament by the writ directed *Rogero de Grey*. He married *Elizabeth* the sole daughter and heir of *John* lord *Hastings* of *Aburgavenny*. He was summoned into all parliaments after, by the name of *Rogero de Grey*, and died 27 *Ed. III.*

28 *Ed. III.* *Reginald*, the son of *Roger*, and the heir of him and *Elizabeth* his wife, was summoned to parliament, and the writ directed *Reginaldo de Grey de Ruthen*, and not by the name of lord *Hastings*. And if he had had the barony of *Hastings*, he had had the precedence, as it happened temp. *Ed. IV.* in the case between *Sir Richard Fines* then lord *Dacres*, and *Humphrey Dacres*. *Richard* was created lord *Dacres*, the barony of *Dacres* being void by the attainder of the then last lord *Dacres*, *Richard* by virtue of his creation took the old place. And if a creation give him priority, much more should *Reginald* lord *Grey* have had priority, who was heir, if he had had more than the stile of lord *Hastings*.

Note, That *Elizabeth* was sole heir, therefore, *Reginald* had as good right as the petitioner, but he had not the barony, either for that, 1. It could not descend to a woman; or, 2. For that it drowned in the earldom of *Pembroke*.



Note, that *Elizabeth* had it by a *possessio fratris*.

As to the barony of *Ruthen*, I do not find that ever *Roger* had it. The castle and manor he had by a fine levied by his father *John* lord *Grey of Wilton*, 17 *Ed. II.* and it may be it was held by a barony. But it doth not follow that he was therefore a baron of parliament. It is a rule, that an honour or barony, or a tenure by barony, doth not enforce a conclusion that the possessor is a baron of parliament.

2 *Ed. I.* A partition was made of the manors and lands of *Aburgavenny*, and *Haveringham*, between *Hastings* and *Zouch*, the coheirs of *George Cantalupo*; they were held by barony, and severally allotted, yet the owners were not barons, for *Eva* wife of *William Cantalupo*, was proprietor of the barony of *Aburgavenny*, and had issue



George died without issue, Joan married Henry baron de Hastings, and had Aburgavenny, Millicent married to Eudo de Zouch, and had Ha-veringsworth. The partition made them not barons, for John baron de Hastings, owner of the barony of Aburgavenny, was never summoned to parliament by the name of lord Aburgavenny, but lord Hastings. Reginald, lord Grey de Ruthen, was his cousin and heir, and possessed that manor, but never had the title. Reginald sold it to William Beauchamp, who was after summoned to parliament, and held the honour and place, but by the king's special limitation. By the attainder of Rich. III. the castle and manor came to Hen. VII. Yet the Nevils continued to have the honour of the barony, and it came to Henry Nevil, who 29 Eliz. had issue Mary his sole daughter, married to Sir Thomas Fane, but she never had the barony, although the matter came a judicial discussion in parliament.

The barony came not by the castle, or by tenure, but by writ, and the first summons of parliament was the year after the death of his father, who died 17 Ed. II. 18 Ed. II. Roger was summoned to parliament, but not as lord Ruthen, the summons was Rogero de Grey, and so he was summoned, claus. 19. Ed. II. m. 27. dorf. and so 20 Ed. II. 1 Ed. III. 2 Ed. III. 3 Ed. III. 4 Ed. III. 5 Ed. III. and all the other parliaments till 27 Ed. III. so long as he lived.

Cl. 28 Ed. III. m. 26. came in the first mention of Ruthen; it was upon this occasion. Roger being dead, Reginald was his son and heir, and the lord Grey of Wilton, was called Reginald, so being two Reginalds, the writ to the lord Grey of Wilton, was Reginaldo de Grey seniori, and to the other, Reginaldo de Grey de Ruthen, and so it was cl. 29 Ed. III. m. 8. dorf. which was only a distinction of names, and not a real part of the honour; and since that time, the writs went so, both to that Reginald, and his son Reginald, and so to Edmund, till 5 Ed. IV. that Edmund was created earl of Kent. And after 6 Ed. IV. m. 1. Edmund was summoned by the name of earl of Kent only, no mention being made of Hastings nor Ruthen.

Collection.

1. The right name of the honour is lord Grey.
2. The name of Ruthen is only an addition upon the occasion aforesaid, introduced 28 Ed. III.
3. That Hastings is only a style or appellation, which went along with the other honours, but they never had place or voice in respect thereof.

2. Petitioner hath no right.

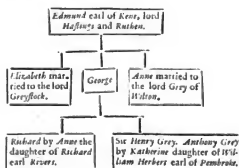
Admit the baronies real, and not appellations, and not conjoined to an earldom.

Admit the petition well, and not mistaken, as to the dignities, yet the petitioner is barred to have them, for he is not heir to Richard who once had them.

I confess the petitioner is heir general of the last earl Henry, and so of Charles his grandfather, and Henry and Reginald his great uncles, but as his claim is as heir general of the first Reginald 28 Ed. III. I must vary from him. I may admit him heir general to the first Reginald, but not to those dignities, for that if the rule of common law be strictly observed, neither the petitioner, nor my lord of Kent, can claim them, as the case is.

The reason is, it is a rule in the common law, He that will make himself heir to an estate of fee simple, must be heir to him who was last actually seised thereof. But Reginald the son of Henry Grey, the son of Sir Henry Grey, being of the half blood to Richard earl of Kent, lord Hastings, and lord Grey of Ruthen, could not be heir to Richard, ergo, neither can the petitioner who claimeth under Sir Henry, Reginald, &c.

The pedigree is thus.



Richard was earl of Kent, 20 Hen. VII. and actually seised of the honour, sat in parliament 1 Hen. VIII. 4 Hen. VIII. 5 Hen. VIII. 6 Hen. VIII. 7 Hen. VIII. and 14 Hen. VIII. 1522.

He having sat in six parliaments, could not but be actually seised and possessed of the honours, and then could not the same descend to Sir Henry Grey, the petitioners ancestor. It being a rule in the first chapter of Littleton, §. 8. That if a man be seised of land in fee simple, and hath issue a son and a daughter by one venter, and a son by another venter, and die, and the eldest son enter and die without issue, the daughter shall inherit, and not the younger son, yet the younger son is heir to the father, but not to the brother. Richard earl of Kent, lord Hastings and Ruthen sat in parliament, and was in actual possession thereof, and was of half blood to Sir Henry, therefore neither Sir Henry, nor any claiming under him, can by the ordinary course of law, inherit.

Object. Co. Litt. 15. b. & 3. Co. 42. a. Ratcliffe's case. There can be no possession of dignities, but such as descendeth, as to be a duke, earl, baron to a man and his heirs, and then the brother by the half blood, being heir to the father, shall inherit the dignity inherent to the blood, as heir to him who was first created noble.

Ref.

Respons. 1. This is my lord Coke's own collection, which under favour I may deny, having both authority and reason for it. 48 *aff.* 6. *Ralph Everden* brought a writ out of the *Chancery* commanding the justices to discharge him of the oath of a juror at the assizes, for that he was a baron, the justices examined if he held by barony, and if he and his ancestors came to parliament as barons, and if so, it was allowed. By which it appeareth, that the coming to parliament is possession, as 3 *Hen. VII.* 5. *Pere mort seisi del advowson en gros, si seigne firs present, ceo fuit possessio fratris*, and the sister shall inherit, if he present not, then the younger brother may inherit; yet the presentment is not the advowson, but the fruit of the advowson. So the sitting in parliament is the possession and fruit of the barony.

Possession may be had of that which is inherent in blood. Homage *auncestrel* draweth to it warranty and acquittal, if the lord have received the homage, *i. e.* if the tenant hath done unto the lord, homage. And it is called homage *auncestrel*, because of the continuance which hath been by title of prescription in the tenancy, in the blood of the tenant; and also in the feignory, in the blood of the lord. *Litt.* §. 143, 144. And if possession can be had of homage *auncestrel*, which is to swear to be faithful and perform services, much more of dignities with place in parliament, and privileges in commonwealth, as not to be arrested, and not to be sworn in juries.

Edmund had issue two daughters, *Elizabeth* and *Anne*, and they cannot have the dignities, for they are not divisible. 23 *Hen. III.* *Fitz. tit. partition.* 18. *Nota.* If the earldom of *Chester* descend to coparceners, it shall be divided between them as other lands, and the eldest shall not have the feignory and earldom entire to her self, *quod nota*, adjudged *per totam curiam.* *Co. Litt.* 165. a. By the earldom, is understood the possessions of the earldom, for the dignity, the king shall have it in his power, for the uncertainty, to confer upon which of the daughters he please. And this hath been the usage since the conquest, as it is said. But where there is but one daughter, there the dignity shall descend to that one daughter, for there is no uncertainty, and so it was in the case of *Sampson Leonard*, who married *Margaret* the only sister and heir of *Gregory Fines*, lord *Dacre* of the *South*, and in the case of *William lord Ros.*

2. There is no legal difference, as to this point of *possessio fratris*, between one heir and more coheirs. All in this point of the argument labour for, is, that by the ordinary rules of common law, the petitioner is barred, and then we have no more to do with his petition.

Though the daughters cannot have it when they are married, but the king hath the disposal, yet it is a bar to the petitioner; As if a man seised of lands in fee, hath two sons, the eldest is attainted, and then the father dieth, the king shall have the land, and not the younger, for the elder is an impediment; but if the elder

haddied before the father, then the younger should have had the lands by descent. *Dyer.* 274. pl. 40, 41. So the two daughters, if the rule of law be observed, are a bar to the younger brother, though they have it not.

3. An use or trust, is a thing of such a nature, as it is hard to come to possession, yet seeing it hath got the reputation of an inheritance descendible, a *possessio fratris* will lie of it. *Co. Litt.* 14 b.

This is sufficient to destroy the petitioner's title, but it will be satisfactory to shew that the earl of *Kent* hath good right and title to the dignities claimed, and therefore to give your lordship that satisfaction, I shall take this course.

To pretermitt the civil law, *feud. lib.* 1. *tit.* 14. *de marchia*, which doth much conduce to my lord of *Kent's* title, for doctor *Ridley* saith in his *view of the civil law*, par. 2. c. 1. §. 8. As in kingdoms, so in all dignities under kingdoms, the eldest brother is to be preferred before all his other brethren, and they successively one before another, if there be no issue left of them that go before, and the male line is to be preferred before the female. To leave this, I say, I have sufficient by the common law, to entitle my lord of *Kent* to his baronies, for these reasons.

1. The law in case of descents is not bound to the ordinary course of descents. And that there be several courses of descents, as descents according to custom, which the common law taketh notice of, and the reason in descents of honours makes for him.

2. That this inheritance of honour is a special kind of inheritance in limitation, being created by writ, without expression of any heirs, and yet it standeth with the law, that the same go to the male line.

3. It is an inheritance raised upon a consideration, which is executory, which none but the male line do perform, and therefore it belongeth to them.

4. That where an inferior honour doth annex with a superior, it is either absorbent, or doth wait upon the superior, and so the state.

5. That the custom in cases of honour is, and hath been, that inferior honours do wait upon the superior, and if such be the custom, such is the law; and if such custom be broken, it will make trouble and disquiet.

1. That the law is not bound to adjudge course of descents from father to eldest son in lands, is most apparent, and there is no reason but the like may be in other particular cases between other ancestors, where a reasonable custom doth approve of it, and hath used it; and therefore *Littleton* in his chapter of *parceners by custom* §. 265. saith, If a man be seised in fee of *gavelkind* lands, and hath divers sons and die, the lands shall descend to all the sons equally; and the reason is §. 210. for that, every son is as great a gentleman as the eldest, and may grow to greater honour and valour, if he hath any thing by his ancestors, or otherwise peradventure he cannot so well attain to it. *Litt.*

Litt. §. 211. The youngest son shall inherit *borough English* lands; the reason is, for if he want father and mother, he is least able to help himself.

So as if there be an indifferent good reason for an alteration of the descent of inheritance, it may be altered from the ordinary course of law.

As the custom of *gavelkind* and *borough English* is reasonable, so the law doth take special notice thereof, as *1 E. IV. 6.* The law doth take notice of the general customs as *gavelkind* and *borough English*, but not of particular customs; for the one goeth thro' the realm, and the other is the particular custom of particular limits; And here, as I shall shew hereafter in this case, the custom is in like cases, for the inferior honours to wait upon the superior, when we come to precedents.

There was at the common law an estate descendable only upon the males, before the stat. of *Westminster, 2. de donis*; That made no alteration but in alienation.

And in point of honours, Sir *John Ferne*, learned in the law of arms, collecteth out of good authors (*of generosity, p. 274.*) that counsins descending from women are said not to be of the family, the kindred and blood of the house is continued by them, but not the family. *Filii familiam paternam sequuntur quoad originem, quoad nationem, quoad honores.* Notwithstanding, if the daughter be an heir to her ancestor, then to her and her issues, shall descend the coat armory, for she is in that case (the male line being ended) called the image of the ancestor, but such a coat borne by her issue is called *imperfect* in bearing, since it is not borne by that family and name to which it did originally belong.

Where, i. by these words, (*the male line being ended*) it appeareth she shall not hold the arms, if any of the males continue.

2. The words of *the family and name* do imply the males, and this name of *Ruthen* was settled in the name of *Grey*.

2. This is a special kind of inheritance, and therefore may have a special kind of descent.

It is a special kind of inheritance, for that it is created by writ, and without words of *heirs*, and as custom hath made it an inheritance, so it will direct the descent and course of the inheritance.

Littleton, §. 1. saith, That the word *heirs*, make an estate of inheritance in all feoffments and grants; and yet that rule is not generally so to be understood, but that in certain extraordinary cases it is otherwise. As if land be given to a man and a woman in frank marriage, they have an inheritance, and special entail, i. e. to the man and the woman, and the heirs of their two bodies begotten; so as if the man and woman have other children and heirs by former marriages, yet no other heirs can inherit those lands so given, without the word, *heirs*, but only such as are within the special limitation and intent of the gift. *5 H. III. Fitz. Tayle. 28. 4 H. III. Fitz. Formedon. 64.*

Their dignities being created by writ without the word *heirs*, are a special kind of inheritance, and the law will marshal the descent therein in such sort, that the honour shall descend upon such

heirs, as are capable to perform the consideration moving the writ; which consideration was, to give advice and counsel in parliament, which no woman can do, but must be done by males.

It is an inheritance by virtue of these words, *vobis mandamus sub fide & homagio quibus nobis tenemini.* No man shall do homage but he that hath an estate of inheritance, either in his own right, or in the right of his wife, &c. ergo, it is an inheritance. *Litt. §. 90.*

Before the statute of *Westminster, 2. de donis.* If land had been given to a man, and to the heirs males of his body, this was descendable upon all the heirs males, the statute only took away the power of aliening by fine and feoffment. *7 Co. 34. b. 35. a.*

3. This kind of inheritance thus raised by writ, is raised upon a consideration executory, which none can perform but males.

The consideration is greatly material in all the king's grants.

Here I meddle not with honours created by patent made to honourable women, the king, who is the fountain of honour, may, and often hath created honourable women by patent. Therein is a manifestation of his express pleasure, that it shall be so, and apt words of creation, and words to enable the male issue in parliament to counsel.

But that a woman may have a creation by writ, I never heard of any, and it is difficult, for that which in law was never done, to be done. If the king make any such by writ, the issuing out of the writ, and directing it to such woman by name, may shew his pleasure is, that such a woman shall have such an honour; but this is no way our case. This writ was directed to a man, *Rogero de Grey*.

It is for advice and counsel, that is the consideration of the writ. *Spelman. Gloss. pag. 80. Quia, &c. super quibusdam arduis negotiis nos & regnum nostrum caeterosque proceres & magnates de eodem regno tangentibus, sine vestra & eorum praesentia nolumus expediri, &c. parliament. Westminster. tenere & vobiscum super his colloquium habere volumus & tractatum, vobis mandamus in fide & homagio quibus nobis tenemini firmiter injungentes quod, &c. interitis nobiscum apud Westm. die mensis proxime futur. vel saltem infra terminum diei subsequenti ad ultimum super dictis negotiis tractaturi & vestrum consilium impensuri, &c. & hoc nullo modo omittatis. Teste meipso, &c.* So that counsel is the consideration of the first writ, and subsequent counsel is the consideration of all the subsequent writs, and that in parliament, where a woman subject was never seen to give counsel.

A consideration is a cause or occasion meritorious requiring a mutual recompence in deed or in law, *Dyer 336. pl. 34.* As if an annuity be granted *pro consilio impendendo*, if the grantee will not give counsel, the other may stay the annuity, for that he cannot have the thing for which the annuity was granted, *9 E. IV. 20.* So it is, if the party which ought to give counsel be disabled to do it; So it was objected in *Empson's case, Dyer 2. pl. 2.* who was in pri-

son for treason, but there ruled to be no disability, for he was able to give counsel, notwithstanding his imprisonment; but admitted, if he had not been able to give counsel, the annuity determined.

The consideration is executory, and an executory consideration is future and continual, as grant of an office and fee *pro exercitio ejusdem*, if the office is determined, the fee is determined, *Dyer* 336. pl. 34.

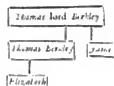
So here, if counsel cannot be had, the honour cannot be enjoyed. And it is clear that every baron of parliament is bound to give counsel. One sitting in parliament satisfies not the consideration of the honour.

It hath fallen out, that the father hath been called by writ and not his heirs. *Reginaldus de Argentine*, summoned 25 E. 1. *Ralph Fassfield* summoned the same year.

Therefore seeing there ought to be a continual consideration, and the petitioner cannot derive himself from such an ancestor as was within the consideration of the creation of the honour; for it was never seen that a woman subject did sit to give counsel in parliament, but issue males have altogether sat there; and therefore this special inheritance is to follow the consideration, which cannot be performed but by issue male, it being a rule in law, If lands be given to a man and the heirs males of his body, who hath issue a daughter, and she a son; the son shall not inherit, for that he cannot derive himself by the male line, *Litt.* §. 24. So here seeing the lady *Susan*, the petitioner's mother, could not sit in parliament, neither shall he.

Objection. It hath been usual where a barony did fall upon a sole daughter and heir, and a competent inheritance to support the same, and a marriage without disparity, that the inheritance hath gone to the son of that daughter.

Response. No difference in the reason of law, as to descents between the sole daughter, and coheirs; but I confess, where a sole barony not meeting with a greater honour, otherwise descendable, hath been in a man who left a sole daughter and heir, it hath many times so fallen out, that the king hath conferred the honour upon the issue of that daughter; but that is *ex gratia regis*, not *ex vigore legis*; and it is rather a restitution or revival of an ancient honour, than right of descent; As it happened in the case of *George Nevil*, summoned to parliament by the name of lord *Aburgavenny*, who was son of *Edward Nevil*, lord *Aburgavenny*, and of *Elizabeth* the daughter and sole heir of *Richard Beauchamp*, who died 9 H. V. and was earl of *Worcester*, and lord *Aburgavenny* by writ. In which case the earldom determined by the failure of issue male, and yet *George Nevil* had not the barony in right of his mother *Elizabeth*, for *Edward* his father, husband of *Elizabeth*, was first summoned by that name in his own right, and of the grace of the king, without naming his wife. So *Thomas* lord *Berkely*, who died 41 E. III. had issue *Thomas* and *Jamer*, *Thomas* had issue *Elizabeth*, married to *Richard* earl of *Warwick*, yet the barony went to *James*.



James had the barony, which if the heir female had had right, should have gone to her.

The lord *Cromwell* was created by writ, and died, leaving *Maud* lady *Willesby*, and dame *Joan* his heirs. This rested in the king to dispose, who conferred it upon *Sir Humphrey Bourchier*, who married *Joan* the younger sister, and he had it in his wife's life-time. So as it appeareth that the king being the fountain of honour, doth permit and dispose of honours to go to the heirs, or dispoeth them to the husbands or kindred, as he adjudgeth fit, yet this always in such cases, where there is no other who hath right to claim them. But yet it is particular grace; for if it had been *ex vigore legis*, that a sole daughter and heir, or her issue by her marriage, without disparagement, should have the honour, then had *Reginald* lord *Grey*, the son and heir of *Elizabeth*, the sole daughter of *John* lord *Hastings*, been summoned to parliament as lord *Hastings*, and had priority.

This reason most proper to this case.

4. The fourth reason is, That it is absurd, or that *magis dignum trahit ad se minus dignum*. A barony inverted into an earldom shall always attend it.

Until the time of king E. III. this honour of an earl was the the greatest a subject attained unto. *Sir John Davis* in his *Irish* reports, 59. b. saith, they were *comites a comitendo principem, summi proceres, & a rege proximi*. They had counties assigned them to govern, they were *judices ordinarii*. This order began presently after the declination of the *Roman* empire, introduced into *Germany* by *Charlemagne*, and brought into *England* by the *Saxons*.

Dukes were first created by E. III. *Edward* the black prince. Marquises by R. II. *Robert* earl of *Oxford*. Viscounts by H. VI. the lord *Beaumont*, 9 Co. 124. b. 125.

As earls were *a rege proximi*, so no doubt they did participate of the fountain from which it issueth.

The queen granted to the earl of *Rutland* the office of stewardship of the manors of *Mansfield*, *Bolsover*, and *Horsley*, and no expression of power to make a deputy. One question was, if he could make a deputy or no, being an office of skill, fidelity, and discretion; and adjudged he might; by reason of the dignity of his person, being an earl, who is to be conversant in the affairs of state, and for vicinity of blood, for they antiently were of the blood royal, and the king in all his appellations doth stile them *per nomen clarissimi consanguinei nostri*, and they have high and great privileges, and a stewardship of a court baron is too mean to execute, 9. Co. 49. a. count de *Salop's* case.

It is the nature of honour to absorb all inferior honours in superior of the same rank, be it in the greater or lesser nobility. As if an obligation

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tion be made to an esquire, who afterwards is made a knight, the writ shall not be *ad respondendum* *I. S. milit. alias dist. I. S. armigeri, per* Danby 32 *H. VI. 29.* So in the greater nobility, if a baron be made an earl, he shall be named only an earl.

So in the case of the dutchy of *Lancaster*, *Powd. 214. a.* it is agreed *H. IV.* was son and heir of *John of Gaunt*, one of the sons of *E. III.* and he was also son and heir of *Blaunche*, wife of *John of Gaunt*, daughter and heir of *Henry* duke of *Lancaster*, so that the dutchy came unto him by his mother; but after he had deposed *R. II.* and assumed the regal state, not only his honours of duke and earl, &c. were drowned, but the lands he held by his mother were, in him, in right of his crown; he could not be both duke and king.

The books to this purpose take a difference between an earl and a baron. 8 *Hen. VI. 9. 10.* A writ was *præcipe J. S. quod reddat Johanni Lovel militi unum messuagium, &c.* *Fulthorpe* demanded judgment of the writ, for he is a baron, not to be named in the writ. *Babington.* There is a difference between a lord which is a baron and an earl, for where the writ is brought against an earl, or for an earl, he ought to be so named, for it is his name of dignity, and so it is adjudged.

39 *Ed. III. 35.* In *Bre. de ravishment de gard vers Sir Gilbert Umfravil*, it abated, for that he was an earl, *viz.* earl of *Angus*, not so named in the writ, for it was the name of his dignity, and he ought to be so named; and 14 *Ed. III. Fitz. Bre. 278.* accords in the case of the earl of *Glocester*.

The dignity of a baron is drowned by the accession of a greater honour, although the barony be greater in place and appellation, and this is proved *a posteriori per effectus.*

Every baron hath a place and voice in parliament, as a baron. A baron is created an earl; the king, who is the judge and fountain of honour and justice, doth never after summon him by the name of a baron, but of an earl only. Which were a wrong unto him, if he had any reality of the barony in him, or more than the title and style of appellation. But this is the course of all summons, and the king herein doth no wrong, for that the reality of the barony is absorbed.

If a baron be made an earl, and the barony doth continue, then should that earl have two voices or places in parliament; one as earl, and the other as baron. So of two, three, or more baronies, two, three, or more voices; but there is no such thing; therefore it of necessity follows, that after the accession of a greater or more eminent honour, there doth nothing of the inferior remain, but styles and honourable titles of appellations. For it is a rule in law, 4 *Co. 118. a.* *Quando duo jura conveniunt in una persona æquum est ac si essent in diversis.* And if you do allow one person to give two voices by reason of a proxy, *a fortiori*, one person should give two voices where he hath two real and distinct honours.

That the accession of a greater honour doth

merge and absorb the less, is thus proved, in that, as an earl who hath baronies, hath no more privileges really in him, as exemptions of his person from arrests, serving on juries, &c. so he hath no prejudices; For by the stat. of *mag. cart. c. 2.* the relief of an earl is 100 *l.* being the fourth part of his possessions by intendment, which ought to be 400 *l.* A baron's is a 100 marks, his possessions ought by intendment to be 400 marks, and this was the old common law, 9. *Co. 124. b.* Now if an earl continue his baronies really in him as distinct things, then should he pay for both 166 *l.* 13 *s.* 4 *d.* for so by the same rule he ought to pay, as for a knight's fee; For if a man hold his land by two knight's fees, he ought to pay 10 *l.* to his lord for relief, 5 *l.* being the relief of one knight's fee. *Litt. §. 112, 113.* And the like for honours, if they were really in an earl; but such a kind of payment was never seen, and surely it would have been, if the honours had been real.

And this doth answer the objection out of *Alton's* case, *Co. 4. 118. a.* put only by the counsel on the by. The stat. 21 *H. VIII. c. 18.* is to be taken strictly, for if a bishop be made or translated into an archbishop, or a baron be made an earl, he hath both those dignities, & come est commencement dit, quando duo jura conveniunt, &c. *uncore il n'averà pñsors chapelens que archevesque ou comte poient aver.*

As the style of inferior dignities are only titular in the father, so are they in the son.

32 *H. VI. 28, 29.* Sir *John Talbot* brought an accord of debt against *John Leverfage*, and it was *præcipe Joh'i Leverfage quod reddat Joh'i Talbot militi seniori filio Joh'is Talbot comitis Salopiac, &c.* Exception was taken to the writ, for that the father was lord, and the son no way lord, for that the son shall not be exempted from *capias*, he shall be sworn on juries, and tried by a common jury, as is daily seen, which proves the son was not lord.

The king doth call the eldest son of an earl to parliament by summons, and in the name of the honour of barony of his father, and alloweth him that place, and he really hath it. If the honour were in the father, this could not be, for then the king should deprive the father thereof, which were a wrong unto him, or it were but a created baron, and then the place he could not have, *vid. 31 Hen. VIII. c. 10.* But this doth stand with use and custom, and therefore with law; and therefore it is apparent that the reality of the inferior honours do not continue after the accession of a superior.

Object. The earldom and the baronies are two distinct things, the earldom in *Kent*, and the baronies in *Wales*.

Respons. I know no case in law, either of lands, or profits out of lands, will parallel this case; The reason is, although the honours be several in respect of time, estate, or place, yet they are all conjoined in one blood, and it were not enough to say, because the barony of *Hastings* came by a woman, it should go by a woman. The reason is, for that a barony when it doth

doth fall, or come to any person, it doth enoble the blood; and as my lord Coke on *Litt.* 15. b. saith, The dignity is inherent in the blood, and the blood being enobled, it is to descend as the blood descendeth; And as the eldest brother is more worthy of blood than the younger; for if the middle brother purchase, and die without issue, the land shall descend to the eldest, and not to the youngest, for that the eldest *est plus digne del' sanke*; So the male line is to be preferred before the female, so long as that male line doth last, in which the honour is coined; for it is more worthy of blood; and the rather, for that the honours of an earl and a baron are but of one nature, and differ only in priority and degrees.

A master of arts in the university is a degree; he comes to be a doctor in law or divinity, his degree of that he had before is drowned in the higher, and he is no more to be called a master of arts. So an utter barrister at law, and a reader of the law is called to be a serjeant, which is a farther degree, it is *ad statum & gradum*, he is no more said to be a barrister, but a serjeant at law; But these may seem to illustrate, but will not come home to the case; for a man may give over his profession, but not his blood, without the blot of attainder. *Per attainder son sank est corrupt, il est devenus ignoble*, and his dignity is determined, 4 Co. 118. b.

Object. *Les baronies sont en fee, & le earldom en tail*, the fee cannot drown in the entail.

Respons. The fee cannot drown in the entail, but the fee may be surrendered to the king.

If a man be seized of lands in fee-simple, he may surrender to the king, he is lord paramount of all.

An implied act will amount to a surrender, as if tenant for years accept a new lease, or another estate, this is a surrender in law.

So if a man that is noble will accept another degree of nobility, whereby his blood may be further enobled, this may amount to a surrender, and surely some such construction is to be made thereof, for that no inferior honours have parted from superior after they have been in one person, 'till the superior be spent and determined, can never be shewn.

5. The custom, and therefore the law in cases of descent of honours, is, when a barony by writ is once involved into an earldom, it shall wait upon the earldom, and may not after be transferred into another family, by a daughter and heir, so long as the earldom doth continue in the male line.

This point is rather matter of fact and precedent, than of law; the law doth follow the fact.

A custom is a reasonable act iterated, and continued time out of mind of man, *Dav.* 32. a. as borough English and gavelkind; So are other customs, *quia consuetudo ex certa causa rationabili usitata privat communem legem.* *Litt.* §. 169. Custom of the court, maketh the law of the court, 1 E. IV. 6.

This hath been the custom in cases of honour.

In cases of single heirs, 1. *Courtney*, earl of Devon. 2. *Fitz-Alan*, earl of Arundel. 3. *Manners*, earl of Rutland. 4. *Clifford*, earl of Cumberland. 5. *Ratcliffe*, earl of Suffex.

and in cases of coheirs. 1. *Michael de La Pole*, earl of Suffolk. 2. *Arundel*, Oxford, Northampton, Shrewsbury, Derby.

I leave the precedents to be studied by the officers of arms.

But because I find my lord Coke in his *Litt.* 165. a. doth cite the lord Dacre's case, and the lord Ros's case, I will answer them.

Sampson Leonard, married with *Margaret* the only sister and heir of the lord Dacre, of the South, and heir of *Gregory* lord Dacre, and had the dignity. I say it was *ex gratia regis*, not *ex vigore legis*, for the reason before. And it was a single barony, and not conjoined to an earldom as these baronies are.

The case of the lord Ros, maketh strongly for my lord of Kent. The case, and the determination of it is thus:

Sir *Walter Especk*, lord of *Hamlake*, alias *Hemfley* in *Yorkshire*, died 1153. an. 18 *Stephani regis*. He gave his sister *Adeline*, in marriage with *Peter de Roos*, and the manor and castle. *Peter*, became lord *Roos*, of *Hamlake*. *Edward de Ros*, his grandchild, married *Rose* the heir of *Trusbut*, and was lord of *Trusbut Ragbie*. 1 E. IV. *Thomas*, lord *Ros*, was attainted for adhering to H. VI. 1 H. VII. *Edmund*, the son of *Thomas*, was restored, and died without issue, having two sisters; *Eleanor*, married to Sir *Robert Manners*, and *Isabel* married to Sir *Thomas Lovel*, who died *sine prole*. Sir *Robert* and *Eleanor* had issue Sir *George Manners*, who was summoned to parliament, and had issue *Thomas* lord *Ros*, of *Hamlake*, who, 17 H. VIII. was created earl of *Rutland*, to him and the heirs males of his body; *Thomas* had issue, *Edward* and *John*; *Edward* had issue, *Elizabeth*, his only daughter, who was married to the lord *Burleigh*, and had issue *William*, called lord *Ros*, and died, *John* succeeded in the earldom, had issue *Roger*, *Francis*, and *George*; *John* and *Roger* died.

The question was between *Cecil* and *Francis*.

July 1616. the late king determined the question thus.

He ordained *William Cecil* to be lord *Ros*, without addition of *Hamlake*, and to have the ancient place of the lord *Ros* in parliament and other assemblies, and the earl of *Rutland* to be lord *Ros* of *Hamlake*, *Trusbut*, and *Belvoir*, and his son and heir, according to the laudable custom, to enjoy the name of lord *Ros* of *Hamlake*, *Trusbut*, and *Belvoir*.

So that, 1. It was rather an ordination of a new honour, than a determination of the matter with the son of the lord *Burleigh*, for there was no such honour as lord *Ros*, without addition.

2. If he had right to the barony of *Ros*, he had as good right to the barony of *Trusbut*, but that rested no ways touched upon.

3. It was a new creation; for either the barony of *Ros*, and of *Ros* of *Hamlake*, are one or divers; if divers, then *Ros* was a new creation; if one, then two men had it, and that was impossible; therefore it must needs be a new creation, and then the old rested in the earl of *Rutland*, and yet doth. And so I say this may do with my lord of Kent.

ILLUSTRATION.

ILLUSTRATIONS

On the first Eighteen

S O N G S

O F

Drayton's Polyolbion.

VOL. III.

10 P

T O

TO THE READER.

PERMIT me thus much of these notes to my friend. What the verse oft, with allusion, as supposing a full knowing reader, lets slip; or in winding steps of personating fictions (as some times) so infolds, that sudden conceit cannot abstract a form of the clothed truth, I have, as I might, illustrated. Brevity and plainness (as the one endured the other) I have joined; purposely avoiding frequent commixture of different language; and whenever it happens, either the page or margin (especially for gentlewomens sake) summarily interprets it, except where interpretation aids not. Being not very prodigal of my historical faith, after explanation, I oft adventure on examination and censure. The author, in passages of first inhabitants, name, state, and monarchick succession in this isle, follows Geoffrey ap Arthur, Polychronicon, Matthew of Westminster, and such more. Of their traditions, for that one so much controverted, and by Cambro-Britons still maintained, touching the Trojan Bruce, I have (but as an advocate for the muse) argued; disclaiming in it, if alleged for my own opinion. In most of the rest, upon weighing the reporter's credit, comparison with more perswading authority and synchronism (the best touch-stone in this kind of trial) I leave note of suspicion, or add conjectural amendment: As, for particular examples, among other, in Brennus mistook by all writers of later time, following Justin's epitome of Trogus ill conceived; in Robert of Swapham's story of king Wulpher's murdering his children; in Rollo, first duke of Normandy his time; none of them yet rectified (although the first hath been adventured on) by any that I have seen; and such more. And indeed my jealousy hath oft vexed me with particular inquisition of whatsoever occurs, bearing not a mark of most apparent truth; ever since I found so intolerable antichronism, incredible reports, and bardish impostures, as well from ignorance as assumed liberty of invention in some of our antients; and read also such palpable fauxeties of our nation, thrust into the world by later time; as (to give a taste) that of Randal Higden affirming the beginning of wards in 6 Hen. III. Polydore's assertion (upon mistaking of the statute of 1 Hen. VII. that it was death by the English laws for any man to wear a vizard, with many like errors in his history, of our trials by twelve shirives, coat of the kingdom, parliaments, and other like; Bartol's delivering the custom in this isle to be, "quod primogenitus succedit in omnibus bonis"; the Greek Chalcondylas his slanderous description of our usual form of kind entertainment to begin with the wives courteous admission to that most affected pleasure of lascivious fancy^b, (he was deceived by misunderstanding the reports of our kissing salutations, given and accepted among us with more freedom than in any part of the southern world, erroneously thinking, perhaps, that every kiss must be thought seconded with that addition to the seven promised by Mercury, in name of Venus, to him that should find Pfyche; or as wanton as Aristophanes his *Mandragora*:) and many untruths of like nature in others. Concerning the Arcadian deduction of our British monarchy; Within that time, from Brute, supposed about CLO. CLO. DCCC. L. of the world (Samuel then judge of Israel) unto some LIV. before Christ (about when Julius Caesar visited the island) no relation was extant, which is now left to our use. How then are they, which pretend chronologies of that age without any fragment of authors before Gildas, Taliesin, and Nennius, (the eldest of which was since D. of Christ) to be credited? For my part, I believe as much in them, as I do the finding of Hiero's shipmast in our ^c mountains, which is collected upon a cor-

^a Ad C. de summ. trinit. l. 2. num. 42.

^b Unum blandientis, ad pulsum lingue longe mellitum. Apuleius de aur. l. 6. *And you may remember (as like enough he did) that in Plautus Curcul. Qui vult cubare pangit saltem suavium, and such more in other roman poets, with the opinion of Baldus, that a kiss in those southern nations, is sufficient consent to imperfect copulation, meeting of that kind, but copulation, with us and our neighbouring Dutch being so.*

^c *Er nis* *apera* *des* *apera*, *des* *des* *apera*, quae nempe verior videtur lectio.

rupted place in Athenaeus, cited out of Moschion; or, that Ptolemy Philadelph sent to Reutha king of Scots some CLO. D. CCCC. years since, for discovery of this country, which Claude Ptolemy afterwards put in his geography; or that Julius Caesar built Arthur's hofien in Stirling sherriffdom; or, that Britons were at the rape of Hesione with Hercules, as our excellent wit, Joleph of Exeter, (published falsly under name of Cornelius Nepos) singeth: which are even equally warrantable, as Aristot's narrations of persons and places in his Rowlands, Spencer's elfin story, or Rablais his strange discoveries. Yet the capricious faction will (I know) never quit their belief of wrong; although some Elias, or Delian diver, should make open what is so enquired after. Briefly, until Polybius, who wrote near CLO.DCCC. since (for Aristotle ~~was~~ $\omega\sigma\tau\alpha\mu\upsilon$ is clearly counterfeited in title) no Greek mentions the isle; until Lucretius (some C. years later) no Roman hath expressed a thought of us; until Caesar's commentaries, no piece of its description was known, that is now left to posterity. For time therefore preceding Caesar, I dare trust none; but with others adhere to conjecture. In antient matter since, I rely on Tacitus and Dio especially, Vopiscus, Capitolin, Spartian, (for so much as they have, and the rest of the Augustan story) afterward Gildas, Nennius, (but little is left of them, and that of the last very imperfect) Bede, Aflerius, Ethelwerd (near of blood to king Alfred) William of Malmesbury, Marian, Florence of Worcester, (that published under name of Florence hath the very syllables of most part of Marian the Scot his story, fraught with English antiquities; which will shew you how easily to answer Buchanan's objection against our historians about Athelstan's being king of all Albion, being deceived when he imagined that there was no other of Marian but the common printed chronicle, which is indeed but an epitome or desolation made by Robert of Lorrain, bishop of Hereford under Hen. I.) and the numerous rest of our monkish and succeeding chronographers. In all, I believe him most, which freest from affection and hate (causes of corruption) might best know, and hath, with most likely assertion, delivered his report. Yet so, that, to explain the author, carrying himself in this part, an historical, as in the other, a chorographical poet, I insert oft, out of the British story, what I importune you not to credit. Of that kind, are those prophecies out of Merlin sometimes interwoven: I discharge myself; nor impute you to me any serious respect of them. Inviting, not wresting in, occasion, I add some time what is different from my task, but such as I guess would any where please an understanding reader. To aid you in course of times, I have in fit place drawn chronologies, upon credit of the antients; and for matter of that kind, have admonished (to the fourth canto) what as yet I never saw by any observed, for wary consideration of the Dionysian cycle, and mis-interpreted root of his dominical year. Those old rhimes, which (some number) you often meet with, are offered the wilinger, both for variety of your mother tongue, as also because the author of them, Robert of Gloucester, never yet appeared in common light. He was, in time, an age before; but in learning and wit, as most others, much behind our worthy Chaucer; whose name by the way occurring, and my work here being but to add plain song after muses descanting, I cannot but digress to admonition of abuse, which this learned allusion, in his Troilus, by ignorance hath endured.

I am till God mee better mind send
At dulcarnon tight at my wits end.

It is not Necham, or any else, that can make me entertain the least thought of the signification of dulcarnon to be Pythagoras his sacrifice, after his geometrical theorem in finding the squares of an orthogonal triangle's sides, or that it is a word of Latin deduction; but indeed by easier pronunciation it was made of قو القرين i.e. two horned: which the Mahometan Arabians use for a root in calculation, meaning Alexander; as that great dictator of knowledge, Joseph Scaliger, (with some antients) wills, but, by warranted opinion of my learned friend Mr. Lydyat, in his emendatio temporum, it began in Seleucus Nicanor, twelve years after Alexander's death. The name was applied, either because after time that Alexander had persuaded himself to be Jupiter Hammon's son, whose statue was with ram's-horns, both his own and his successor's coins were stamped with horned images; or else in respect of his

his two pillars erected in the east as a ^d nihil ultra of his conquest, and some say because he had in power the eastern and western world, signified in the two horns. But, howsoever, it well fits the passage, either, as if he had personated Crescid at the entrance of two ways, not knowing which to take; in like sense as that of Prodicus his Hercules, Pythagoras his Y, or the logicians dilemma express; or else, which is the truth of his conceit, that she was at a nonplus, as the interpretation in his next staff makes plain. How many of noble Chaucer's readers never so much as suspect this his short essay of knowledge, transcending the common road? And by his treatise of the astrolabe (which, I dare swear, was chiefly learned out of Messahalah) it is plain he was much acquainted with the mathematicks, and amongst their authors had it. But, I return to myself. From vain loading my margin, with books, chapters, folios, or names of our historians, I abstain: Course of time as readily directs to them. But, where the place might not so easily occur (chiefly in matter of philology) there only (for view of them which shall examine me) I have added assisting references. For most of what I use of chorography, join with me in thanks to that most learned nourice of antiquity,

* τὸ τῆς ἐπιτομῆς ἰδίωτος
Τίμα ἀντὶ αὐτοῦ,

my instructing friend, Mr. Camden, clarencieux. From him, and Girald of Cambria, also comes most of my British: And then may Mercury and all the muses deadly hate me, when, in permitting occasion, I profess not by whom I learn! Let them vent judgment on me which understand: I justify all, by the self-author's cited, crediting no transcribers, but when of necessity I must. My thirst compelled me always to seek the fountains, and by that, if means grant it, judge the river's nature. Nor can any, conversant in letters, be ignorant what error is oft-times fallen into, by trusting authorities at second hand, and rash collecting (as it were) from visual beams refracted through another's eye. In performance of this charge (undertaken at request of my kind friend the author) brevity of time (which was but little more than since the poem first went to the press) and that daily discontinued, both by my other most different studies seriously attended, and interrupting business (as enough can witness) might excuse great faults, especially of omission. But, I take not thence advantage to desire more than common courtesy in censure: nor of this, nor of what else I heretofore have published, touching * historical deduction of our ancient laws, wherein I escape not without tax.

Sunt quibus in verbis videorque obscurior, hoc est,
Evandri cum matre loqui, Faunisque Numaque,
Nec secus ac si auctor Saliaris carminis essem.

I have read in Cicero, Agellius, Lucian's lexiphanes, and others, much against that form: But withal, this later age (wherein so industrious search is among admired ruins of old monuments) hath, in our greatest Latin critics, Hans Douz, P. Merula, Lipsius, and such more, so received that Saturnian language, that, to students in philology, it is now grown familiar; and (as ' he saith) verba a vetustate repetita non solum magnos asseriores habent, sed etiam afferunt orationi majestatem aliquam, non sine delectatione. Yet for antique terms, to the learned, I will not justify it without exception, (disliking not that of Phavorin, vive moribus praeeritis, loquere verbis presentibus; and, as coin, so words, of a publick and known stamp, are to be used) although so much, as that way I offend, is warranted by example of such, of whom to endeavour imitation, allows me more than the bare title of blameless. The purblind ignorant I salute with the English of that monitory epigram

—† αἰ δὲ γὰ πάλαν
Νῆς ἔρεν μὲν ἡν, ἔσπον δὲ μὴ ροῖς.

^d Christman. comment. in Afragan. cap. 11. Lyfimachi commentum apud Cael. Rhodigin. antiq. lect. 20. cap. 11. hic genuina interpretatio. * Of whom even every ingenious stranger makes honourable mention. Co item vero illum palatinum R. Vitum Badingothium (cujus historiae magnam partem quasi Byzantiorum chorographica substructio pleraque ad antiquitatis amissum, ab eruditissimo hoc suo populari accepta, ne dicam suppleta, est) adeo inhumanum fuisse miror, ut bene mererent non tam libenter agnoscat, quam clariss. viri syllabis & inventis codicum suum sapienter perquam ingrate suffarinet. Atque id fere genus plagiariorum, rudet omnino, & ^d *μὲν*. & vernaculos nimium nostrates iam nunc imponere sarcinam video indignanter & ringor. * Janus Anglorum. † Quinilian. † If thou dost no safe in learning, meddle no more with what thou understandest not.

ILLUSTRATIONS

ON THE

First Eighteen SONGS

OF

Drayton's Polyolbion.

Illustrations on the first Song.

IF in prose and religion, it were as justifiable, as in poetry and fiction, to invoke a local power (for antiently both *Jews*, *Gentiles*, and *Christians*, have supposed to every country, a singular ^a genius) I would therein join with the author. Howsoever, in this and all *ὁ δὲ Διὸς ἀρχομένης*, *God afore*; and so I begin to you.

S. As Amphitrite clips this island fortunate.

When pope *Clement VI.* granted the *fortunate isles* to *Lewis* earl of *Clermont*, by that general name (meaning only the seven *Canaries*, and purposing their christian conversion) the *English* ambassadors at *Rome*, seriously doubted, ^b least their own country had been comprised in the donation. They were *Henry* of *Lancaster*, earl of *Derby*, *Hugh Spencer*, *Ralph*, lord *Stafford*, the bishop of *Oxford*, and others, agents there with the pope, that he, as a private friend, not as a judge or party interested, should determine of *Edward III.*'s right to *France*. Where you have this embassy in *Walsingham*, ^c correct *regnum Angliæ*, and read *Franciae*. *Britain's* excellence in earth and air (whence the *Macares*, ^d and particularly *Crete*, among the *Greeks*, had their title) together with the pope's exactions, in taxing, collating, and providing of benefices (an intolerable wrong to laymens inheritances, and the crown revenues) gave cause of this jealous conjecture; seconded in the conceit of them, which derive *Albion* from *ὀλβιον*, *happy*; whereto the author in his title and this versie alludes. But of *Albion*, more presently.

S. Amongst whose iron rocks grim Saturn yet remains.

Fabulous *Jupiter's* ill dealing with his father *Saturn*, is well known; and that after deposing him, and his privities cut off, he perpetually imprisoned him. *Homer* ^e joins *Japet* with him, living in eternal night about the utmost ends of the earth; which well fits the more northern climate of these islands. Of them (dispersed in the *Deucalidonian* sea) in one most temperate, of gentle air, and fragrant with sweetest odours, lying towards the northwest, ^f it is reported, that *Saturn* lies bound in iron chains, kept by *Briareus*, attended by spirits, continually dreaming of *Jupiter's* projects, whereby his ministers prognosticate the secrets of fate. Every thirty years, divers of the adjacent islands with solemnity for success of the undertaken voyage, and competent provision, enter the vast seas, and at last, in this *Saturnian* isle (by this name, *ἡ Σατυρική*, the sea is called also) enjoy the happy quiet of the place; some in studies of nature, and the mathematicks, which continue; others in sensuality, which after xxx years return perhaps to their first home. This fabulous relation might be, and in part is, by chymicks, as well interpreted for mysteries of their art, as the common tale of *Dædalus* labyrinth, *Jason* and his *Argonauticks*, and almost the whole chaos of mythick inventions. But neither geography (for I guess not where or what this isle should be, unless that *des* ^g *Macraeons* which *Pantagruell* discovered) nor the matter-self permits it less poetical (although a learned *Greek* father ^h out of some credulous historian, seems to remember it) than the *Elysian* fields, which, with this, are always laid by *Homer* about the

^a Rabbins. ad 10. Dan. Macrobi. Saturnalis. l. cap. 6. Symmach. epist. 40. lib. 1. D. Th. 2. diff. 10. art. 3. alii.

barient. 2. xviii. Ed. III.

^c Hypodigma Neutrie sub anno cix.ccc.xliv.

^d l. 1. c. 7.

^e Iliad. 8. & Hæd in Theogon.

^f Clem. Alexandrini Stromat. 1. Odyss. 2. Iliad. 3.

^g Plutarch de facie in orbe lunæ, & l. de dæd. oracul.

^h Rob. Aref.

ⁱ Pompon. Meli.

^j Rabbais.

§. From which be first was call'd the hoar-rock in the wood.

That the ocean (as in many other places of other countries) hath eaten up much of what was here once shore, is a common report, approved in the Cornish name of *S. Michael's* mount; which is *categ cowz in clowz*, i.e. the hoar-rock in the wood.

§. And our main-Amber here, and Burien trophy--

Main-Amber, i.e. *Ambrose's* stone (not far from *Penzance*) so great, that many mens united strength cannot remove it, yet with one finger you may wag it. The *Burien* trophy is six stones, circularly disposed, and, in the middle, one much exceeding the rest in greatness: by conjecture of most learned *Camden*, erected either under the *Romans*, or else by king *Arthelstan* in his conquest of these parts.

§. Were worthy of his end, but where he had his birth,

Near *Camel*, about *Camblian*, was *Arthur* slain by *Mordred*; and on the same shore, east from the river's mouth, born in *Tintagel* castle; *Gorlois* prince of *Cornwall*, at *Uther-Pendragon's* coronation, solemnized in *London*, upon divers too kind passages and lascivious regards betwixt the king and his wife *Igerne*, grew very jealous, in a rage left the court, committed his wife's chastity to this castle's safeguard; and to prevent the wasting of his country (which upon this discontent was threatened) betook himself in other forts to martial preparation. *Uther* (his blood still boiling in lust) upon advice of *Ulfen Rhicardoch*, one of his knights, by *Ambrose Merlin's* magic, personated like *Gorlois*, and *Ulfen* like one *Jordan*, servant to *Gorlois*, made such successful use of their imposture, that (the prince in the mean time slain) *Arthur* was the same night begotten, and verified that *ἡ ποικίλη γένεσις αἰώνων, bastards are oft-times better than legitimates*. Although *Merlin*, by the rule of *Hermes*, or astrological direction, justified, that he was conceived three hours after *Gorlois's* death; by this shift answering the dangerous imputation of bastardy to the heir of a crown. For *Uther* taking *Igerne* to wife, left *Arthur* his successor in the kingdom. Here have you a *Jupiter*, an *Alcmena*, an *Amphytryo*, a *Sesia*, and a *Mercury*; nor wants there scarce any thing, but that truth-passing reports of poetical bards have made the birth an *Hercules*.

§. Known by one general name upon this point that dwell.

The name *Dumnonii*, *Damnonii*, or *Dannomii*, in *Solinus* and *Ptolemy*, comprehended the people of *Devonshire* and *Cornwall*: whence the *Lizard* promontory is called *τὸ Δαμνιον ἄκρον*, *Dannium*, in *Marcian Heracleotes*; and *William* of *Malmesbury*, *Florence* of *Worce-*

ster, *Roger* of *Hoveden*, and others, stile *Devonshire* by name of *Domnonia*; perhaps all from *dun-nint*, i.e. low valleys in *British*; wherein are most habitations of the country, as judicious *Camden* teaches me.

§. Or that this foreland lies furth'st out into his Which spreads his vigorous flames— (Sight,

Fuller report of the excellence in wrestling and nimbleness of body, wherewith this western people have been, and are, famous, you may find in *Carew's* description of his country. But to give reason of the climate's nature, for this prerogative in them, I think as difficult, as to shew why about the *Magellanic* streights they are so white, about the cape *de buon speranza* to black, yet both under the same tropick; why the *Abyssines* are but tawny moors, when as in the *East Indian* isles, *Zeilan* and *Malabar*, they are very black, both in the same parallel; or why we that live in this northern latitude, compared with the southern, should not be like affected from like cause. I refer it no more to the sun, than the special horsemanship in our northern men, the nimble ability of the *Irish*, the fiery motions of the *French*, *Italian* jealousy, *German* liberty, *Spanish* puffed up vanity, or those different and perpetual carriages of state-government, haste and delay, which as inbred qualities, were remarkable in the two most martial people of *Greece*. The cause of *Ethiopian* blackness and curled hair was long since judiciously^d fetched from the disposition of soil, air, water, and singular operations of the heavens; with confutation of those which attribute it to the sun's distance. And I am resolved, that every land hath its so singular self-nature, and individual habitude with celestial influence, that human knowledge, consisting most of all in universality, is not yet furnished with what is requisite to so particular discovery. But for the learning of this point in a special treatise *Hippocrates*, *Ptolemy*, *Bodin*, and others, have copious disputes.

§. Which now the envious world doth slander for a dream.

I should the sooner have been of the author's opinion (in more than poetical form, standing for *Brute*) if in any *Greek* or *Latin* story authentick, speaking of *Aeneas* and his planting in *Latium*, were mention made of any such like thing. To reckon the learned men which deny him, or at least permit him not in conjecture, were too long a catalogue; and indeed, this criticke age scarce any longer endures any nation, their first supposed author's name, not *Italus* to the *Italian*, not *Hispalus* to the *Spaniard*, *Bato* to the *Hollander*, *Brabo* to the *Brabantine*, *Francio* to the *French*, *Celtes* to the *Celt*, *Galathes* to the *Gaul*, *Scota* to the *Scot*; no, nor scarce *Romulus* to his *Rome*, because of their unlikely and fictitious mixtures; especially this of *Brute*, supposed long before the begin-

¹ Carew descript. Corn. lib. 2.

² Orellius theatro.

³ cap. 4.

⁴ Onesicrit. ap. Strabon. lib. 4.

⁵ Dictus hinc in Merlini vaticinio, Apud Cornuiss.

⁶ Thucyd. 2. & passim de Athen. & Lacedaem. & de Thaeis & Chalcide. v. Columell. 4. de re rustica.

⁷ Euprid. Andromach.

ning of the *Olympiads* (whence all time backward is justly called, by *Varro*, unknown or fabulous) some CIO. CIO. D.CC. and more years since, about *Samuel's* time, is most of all doubted. But (reserving my censure) I thus maintain the author; Although nor Greek nor Latin, nor our country stories of *Bede* and *Malmesbury* especially, nor that fragment yet remaining of *Gildas*, speak of him; and that his name were not published until *Geoffrey of Monmouth's* edition of the *British* story, which grew, and continues in much suspected, in much rejected; Yet observe that *Taliesin* a ¹ great bard, more then CIO. years since affirms it, *Nennius* (in some copies he is under name of *Gildas*) above DCCC. years past, and the gloss of *Samuel Beaulan*, or some other, crept into his text, mention both the common report, and descent from *Aeneas*; and withal (which I take to be *Nennius* his own) make him son to one *Isicio* or *Hesichio* (perhaps meaning *Aschenaz*, of whom more to the fourth fong) continuing a pedigree to *Adam*, joining these words; ² *This genealogy I found by tradition of the antients, which were first inhabitants of Britain.* In a manuscript epistle of *Henry of Huntingdon* ³ to one *Warin*, I read the Latin of this *English*; *You ask me, Sir, why omitting the succeeding reigns from Brute to Julius Caesar, I begin my story at Caesar? I answer you, that neither by word nor writing, could I find any certainty of those times, although with diligent search I oft inquired it; yet this year in my journey towards Rome, in the abbey of Becceniam, even with amazement, I found the story of Brute; and in his own printed book he affirms, that what Bede had in this part omitted, was supplied to him by other authors; of which Girald seems to have had use. The British story of Monmouth was a translation (but with much liberty, and no exact faithfulness) of a Welsh book, delivered to Geoffrey by one *Waker*, archdeacon of Oxford, and hath been followed (the translator being a man of some credit, and bishop of St. Asaph, under king Stephen) by Ponticus Virunnius an Italian; most of our country historians of middle times, and this age, speaking so certainly of him, that they blazon his coat ⁴ to you, two lions combatant, and crowned, or, in a field gules; others, or, a lion passant gules; and lastly, by doct^r White of Basingstoke, lately living at Dorney, a count palatine; according to the title bestowed by the ⁵ imperials upon their professors. Arguments are there also drawn from some affinity of the Greek ⁶ tongue, and much of Trojan and Greek names, with the *British*. These things are the more enforced by *Cambro-Britons*, through that universal desire, bewitching our *Europe*, to derive their blood from *Trojans*, which for them might*

as well be ⁷ by supposition of their ancestors marriages with the hither deduced *Roman* colonies, who by original were certainly *Trojan*, if their antiquities deceive not. You may add this weak conjecture; that in those large excursions of the *Gauls*, *Cimmerians*, and *Celts*, (among them I doubt not but were many *Britons*, having with them community of nation, manners, climate, customs; and *Brennus* himself is affirmed a *Briton*) which under indistinct names when this western world was undiscovered, overran *Italy*, *Greece*, and part of *Asia*, it is ⁸ reported that they came to *Troy* for safeguard; presuming perhaps upon like kindness, as we read of betwixt the *Trojans* and *Romans*, in their wars with ⁹ *Antiochus* (which was loving respect through contingency of blood) upon like cause remembered to them by tradition. Briefly, seeing no national story, except such as *Thucydides*, *Xenophon*, *Polybius*, *Caesar*, *Tacitus*, *Procopius*, *Cantacruzen*, the late *Guicciardin*, *Comines*, *Machiavel*, and their like, which were employed in the state of their times, can justify themselves but by tradition; and that many of the fathers and ecclesiastical ¹⁰ historians, especially the *Jewish* rabbins (taking their highest learning of *cabala*, but from antique and successive report) have inserted upon tradition many relations current enough, where holy writ crosses them not; you shall enough please *Saturn* and *Mercury*, presidents of antiquity and learning, if, with the author, you foster this belief. Where are the authorities (at least of the names) of *Jannes* and *Jambres*, ¹¹ the writings of *Enoch*, and other such like, which we know by divine tradition were? The same question might be of that infinite loss of authors, whose names are so frequent in *Stephen*, *Athenaeus*, *Plutarch*, *Clemens*, *Polybius*, *Livy*, and others. And how dangerous it were to examine antiquities by a foreign writer (especially in those times) you may see by the stories of the *Hebrews*, delivered in *Justin*, *Strabo*, *Tacitus*, and such other discording and contrary (beside their infinite omissions) to *Moses's* infallible context. Nay he, with his successor *Joshua*, is copious in the *Israelites* entering, conquering, and expelling the *Gergesites*, *Jebusites*, and the rest out of the holy land; yet no witness have they of their transmigration, and peopling of *Africk*, which by testimony of two pillars, ¹² erected and engraven at *Tingis*, hath been affirmed. But you blame me thus expatiating. Let me add, for the author, that our most judicious antiquary of the last age *John Leland*, ¹³ with reason and authority hath also for *Brute* argued strongly.

§. Next, Sylvius him succeeds —

So goes the ordinary descent; but some make

¹ Ap. Censorin. de die nat. cap. 31. Christoph. Helvici chronologiam sequimur, nec, ut accuratius temporum subdictioni hoc loci incumbamus, res postulat; verum & ille satis accurate, qui Samuelis praefecturam A. M. CIO. CIO. DCCC. L. haud iniquo compo-
² Jo. Prif. def. hist. Brit.
³ Ex vetustiss. & perperale mss. Nennio sub titulo Gildae.
⁴ Lib. de summariis rerum qui 10. est
⁵ Nennium fuisse obsequium ferme tabulis sum potius asserere.
⁶ Harding. Nich. Upon de re militari. 2.
⁷ C. tit. de
⁸ professio. l. unica.
⁹ Girald. descript. cap. 14.
¹⁰ Camden.
¹¹ Agellianax ap. Strab. lib. 17.
¹² Trog.
¹³ Orig. ad 35. Math.
¹⁴ Pro-

¹⁵ Melchior Canus lib. 11. de ant. hist. hum. de his plurima.
¹⁶ Ad Cyg. Cant.
¹⁷ Comp. lib. 31.
¹⁸ copius de bell. Vandalis. lib. 4.

time Henry of Huntingdon, and Roger Hoveden, refer the beginning of the Danish mischiefs, continuing to intolerable, that under king Ethelred was there begun a tribute insupportable (yearly afterward exacted from the subjects) to give their king *Swein*, and so prevent their insatiable rapine. It was between thirty and forty thousand ¹ pounds (for I find no certainty of it, so variable are the reports) not instituted for pay of garrisons, employed in service against them, as upon the misunderstanding of the Confessor's laws some ill affirm, but to satisfy the warring enemy; but so that it ceased not, although their spoils ceased, but was collected to the use of the crown; until king Stephen promised to remit it. For indeed St. Edward upon imagination of seeing a devil dancing about the whole sum of it lying in his treasury, moved in conscience, caused it to be repaid, and released the duty, as *Ingulph* abbot of *Crowland* tells you; Yet observe him, and read *Florence of Worcester*, *Marian the Scot*, *Henry of Huntingdon*, and *Roger Hoveden*, and you will confess that what I report thus from them is truth, and different much from what vulgarly is received. Of the Danish race were afterward three kings, *Cnut*, *Hardecnut*, and *Harold* I.

§. His off-spring after long expelled the inner-land.

² After some CRO. D. years from the supposed arrival of the *Trojans*, their posterity were by incroachment of *Saxons*, *Jutes*, *Angles*, *Danes*, (for among the *Saxons* that noble ³ *Douze* wills that surely *Danes* were) *Frisians* ⁴ and *Franks* driven into those western parts of the now *Wales* and *Cornwall*. Our stories have this at large, and the *Saxon* heptarchy; which at last by publick edict of king *Ecbert* was called *Engle-land*. But *John* bishop of ⁵ *Chartres* saith, it had that name from the first coming of the *Angles*; others from the name of *Hengist* ⁶ (a matter probable enough) whose name, wars, policies, and government, being first invested by *Vortigern* in *Kent*, are above all the other *German*s most notable in the *British* stories; and *Harding*

— he called it *Engestes* land,
Which afterward was hoged and called *England*.
Hereto accords that of one of our country old poets:

— *Engisti lingua canit insula Bruti*.
Britain sings in Hengist's tongue.

If I should add the idle conceits of *Godfrey of Viterbo*, drawing the name from I know not what *Angr*, the inscription of *L. for R.* by pope *Gregory*, or the conjectures of unlimitable phantasy, I should unwillingly, yet with them impudently, err.

Illustrations on the second song.

THE muse, yet observing her began course of chorographical longitude, traces eastward the southern shore of the isle. In this second sings *Dorset* and *Hampshire*; fitly here joined as they join themselves, both having their south limits washed by the *British* ocean.

§. Which th' antients, for the love that they to Isis bear.

Juba remembers a ¹ like coral by the *Troglodytick* isles (as is here in this sea) and flukes it *Isidis placamos*, *Isis's hair*. True reason of the name is no more perhaps to be given, than why *adiantum* is called *capillus Veneris*, or *scengreen barba Jovis*. Only thus: You have in *Plutarch* and *Apuleius* such variety of *Isis's* titles, and, in *Clement of Alexandria*, so large circuits of her travels, that it were no more wonder to hear of her name in this northern climate, than in *Egypt*; especially, we having three rivers of note² synonymous with her. Particularly to make her a sea-goddess, which the common story of her and *Osiris* her husband (son to *Cham*, and of whom *Bale* dares offer assurance, that in his travelling over the world, he first taught the *Britons* to make beer instead of wine) does not: *Isis pelagia*, *Isis of the sea*, after *Pansanias's* testimony, hath an ³ old coin. The special notice which antiquity took of her hair, is not only shewed by her attribute ⁴ of *λεωξομη*, *hoof haired*, but also in that her hair was kept as a sacred relic in ⁵ *Memphis*, as *Geryon's* bones at *Thebes*, the boar's skin at *Tegea*, and such like elsewhere. And after this, to fit our coral just with her colour, *Ethiopis solibus Isis furva*, *Ethiopian sun-burnt*, she is called by ⁶ *Arnobius*. Gentlewomen of black hair (n o fault with brevity to turn to them) have no simple pattern of that part in this great goddess, whose name indeed comprehended whatsoever in the deity was feminine, and more too. Nor will I swear, but that *Anacreon* (a man very judicious in the provoking motives of wanton love) intending to bestow on his sweet mistress that one of the titles of womens special ornament, ⁷ *well haired*, thought of this when he gave his painter direction to make her picture black haired. But thus much out of the way.

§. Thou never by that name of white-hart had'st been known.

Very likely, from the soil was the old name *Blackmore*. By report of this country, the change was from a white hart, reserved here from chase, by express will of *Hen. III.* and afterward killed by *Thomas de la Lynd*, a gentleman of these parts. For the offence, a mulct imposed on the possessors of *Blackmore*, (called ⁸ *white-hart silver*) is to this day paid into the exchequer. The destruction of woods here bewailed by the muse, is (upon occasion too often given) often seconded; but while the muse

¹ Mariano Scot. xxxv. cto. libere, & Florentio Wigorn.

² Jan. Douz. annal. Holland. 1 & 6.

³ Chron. St. Albani. Heſtor Boet. Scotor. hist. 7.

⁴ Lib. 13. cap. 21.

⁵ Advers. gent. 1.

⁶ Leland ad Cyt. Cant.

⁷ Camden.

⁸ Camden.

¹ Procopius in frag. p. lib. Gothic. ap. Camden.

² J. Gower epigram. in consuet. amant.

³ Goltz. thes. antiq.

⁴ Philostrat. in ixe.

⁵ Lucian. in ae.

⁶ Lucian. in ae.

⁷ Lucian. in ae.

⁸ Lucian. in ae.

¹ Chronologiam huc spectantem consulas in illustrat. ad 4. cant.

² Pausanias. lib. 6. cap. 17.

³ Apud Plin. hist. nat.

⁴ Lucian. in ae.

⁵ Lucian. in ae.

⁶ Lucian. in ae.

⁷ Lucian. in ae.

⁸ Lucian. in ae.

bewails them, it is *Marfyas* and his countrymen, that most want them.

§. On whom the watry God would oft have had his will.

Purbeck (named, but indeed not, an isle, being joined to the firm land) stored with game of the forest.

Thence alluding to *Diana's* devotions, the author well calls her an huntress and a nun. Nor doth the embracing force of the ocean (whereto she is adjacent) although very violent, prevail against her stony cliffs. To this purpose the muse is here wanton with *Neptune's* wooing.

§. That he in little time upon this lovely dame, Begat three maiden isles his darlings and delight.

Albion (son of *Neptune*) from whom that first name of this Britain was supposed, is well fitted to the fruitful bed of this *Pool*, thus personated as a sea nymph. The plain truth (as words may certify your eyes, saving all impropriety of object) is, that in the *Pool* are seated three isles, *Brunksey*, *Fursey*, and *St. Helens*, in situation and magnitude, as I name them. Nor is the fiction of begetting the isles improper; seeing *Greek* antiquities tell us of divers in the *Mediterranean* and the *Archipelago*, as *Rhodes*, *Delos*, *Hiera*, the *Echinades*, and others, which have been, as it were, brought forth out of the salt womb of *Amphitrite*.

§. But toward the Solent sea, as Stour her way On Shafisbury, &c. (doth ply,

The streight betwixt the *Wight* and *Hampshire*, is titled, in *Bede's* story, a sea three miles over, called *Solente*. *J. 4. bift. eccles. c. 16. Pelagus latinus* *xxx. millium quod vocatur Solente*; famous for the double, and thereby most violent floods of the ocean (as *Scylla* and *Charybdis*, 'twixt *Sicily* and *Italy* in *Homers*) expressed by the author towards the end of this long, and reckoned among our *British* wonders. Of it the author tells you more presently. Concerning *Shafisbury* (which, beside other names, from the corps of *St. Edward*, murdered in *Corfe* castle through procurement of the bloody hate of his step-mother *Ælfstith*, hither translated, and some three years lying buried, was once called *St. Edward's*) you shall hear a piece out of *Harding*;

¶ Cairne Paladour that now is Shafisbury Where an angell spake sitting on the wall While it was in working ower all.

Speaking of *Rudbudibras* his fabulous building. I recite it, both to mend it, reading aigle for angell, and also that it might then, according to the *British* story, help me explain the author in this,

§. As brought into her mind the eagle's prophecies.

This eagle (whose prophecies among the

Britons, with the later of *Merlin*, have been of no less respect, than those of *Bacis* were to the *Greeks*, or the *Sybillines* to the *Romans*) foretold of a reverting of the crown, after the *Britons*, *Saxons*, and *Normans*, to the first again, which in *Hen. VII.* grandchild to *Owen Tudor*, hath been observed, as fulfilled. This in particular is peremptorily affirmed by that count palatine of *Basingstoke*. He plainly said that there would be a time of this reverting of the crown. *Et aperte dixit tempus aliquando fore ut Britannicum imperium denuo sit ad veteres Britannos post Saxonas & Normannos rediturum*; are his words of this eagle. But this prophecy in manuscript I have seen, and without the help of *Albertus secreti*, *Canace's* ring in *Chaucer*, or reading over *Aristophanes's* comedy of birds, I understood the language; neither find I in it any such matter expressly. Indeed as in *Merlin*, you have in him the white dragon, the red dragon, the black dragon, for the *Saxons*, *Britons*, *Normans*, and the fertile tree, supposed for *Brute*, by one that of later time hath given his obscurities interpretation; in which, not from the eagles, but from an angelical voice, almost ncc. years after Christ, given to *Cadwalader* (whom others call *Cadwallo*) that restitution of the crown to the *Britons* is promised, and grounded also upon some general and ambiguous words in the eagle's text, by the author here followed; which (provided your faith be strong) you must believe made more than cix. cix. n. years since. For a corollary, in this not unfit place, I will transcribe a piece of the gloss out of an old copy, speaking thus upon a passage in the prophecy: *Henricus* ^{III.} *III.* (he means *Hen. III.* who, by the antient account in regard of *Henry*, son to *Henry Fitz-P. emperre*, crowned in his father's life, is in *Bracton* and others called the fourth) *concessit omne jus & clameum, pro se & hæreditibus suis, quod habuit in ducatu Normannie imperpetuum. Tunc fratrum fuit ejus sigillum & mutatum, nam prius tenebat in sceptro gladium, nunc tenet virgam; qui gladius fuit de conquestu ducis Willielmi bastardi, & ideo dicit aquila, separabitur gladius a sceptro.* Such good fortune have these predictions, that either by conceit (although strained) they are applied to accident, or else ever religiously expected; as *Buchanan* of *Merlin's*.

§. Then those prodigious signs to ponder she began.

I would not have you lay to the author's charge a justification of these signs at those times; but his liberty herein, it is not hard to justify.

Obseditq; frequens castrorum limina bubo:

and such like hath *Silius Italicus* before the *Roman* overthrow at *Cannæ*; and historians

^b Lucian dialog. *Pindar*. *olymp. 2. Strab. Pausanias.*

^c *Twin*, in *Albionice*. ^{2.}

^d *Illind. aquil. Scepionie.*

^e *Im m. the seals of those times give no warrant for it: and even in king Arthur's, Lealand says, there was a fiery scepter, but that perhaps as a sign, as this false.*

^f *Illst. Scot. lib. 4. in Gogallo.*

^g *Malmesb. lib. 2. de pontific.*

^h *Camden takes this Cairne for Bath.*

ⁱ *A scepter in stead of a sword first in Hen. III's seal, but believe him not.*

commonly affirm the like; therefore a poet may well guess the like.

§. *And at New-forest foot into the sea doth fall.*

The fall of *Stour* and *Avon* into the ocean is the limit of the two shires, and here limits the author's description of the first, his muse now entering *New-forest* in *Hampshire*.

§. *Her being that received by William's tyranny.*

New-forest (it is thought the newest in *England*, except that of *Hampton-court*, made by *Henry VIII.*) acknowledges *William* her maker, that is, the *Norman* conqueror. His love to this kind of possession and pleasure was such, that he constituted loss^k of eyes punishment for taking his vengery: so affirm expressly *Florence of Worcester*, *Henry of Huntingdon*, *Walter Mapes*, and others, although the author of *distinction aquilae*, with some of later time, falsely laid it to *William Rufus* his charge. To justify my truth, and for variety, see these rhimes,^l even breathing antiquity:

Came of houndes he lorde inou, and of wild beft,
And * is forst, and is woodes, and mell the nibe forst,
That is in Northamstere, nor thilke he lorde inou
And alloyed well † mid beftes, and † lete mid gret wou:
Way he call out of houte and hom of men a gret route,
And ** binom their lond thert; mile and more theaboute,
And made it all forst and lete the beftes way to fere,
Of pouer men desired he nom let it here:
Wherwe thertin beil many mischiding,
And is sone was thertine †† ille William the red king.
And it is o fone, that het Richard, caght there is deeth also,
And Richard is o neuus, bere there is nech thertine,
As he rob an honert and pretaune his herte spere,
The unright lio to pouer men to such meauferte tend.
* his. † with. ‡ paffures. ** took. †† Shot by
Walter Trelle. †† his own.

But to quit you of this antique verse, I return to the pleasanter muse.

§. *Her famous Bevis so wer't in her power to choofe;*

About the *Norman* invasion was *Bevis* famous with title of earl of *Southampton*; *Dunston* in *Wiltshire*, known for his residence. What credit you are to give to the hyperboles of *Irebin* in her relation of *Bevis*, your own judgment, and the author's censure in the admonition of the other rivers here personated, I presume, will direct. And it is wished, that the poetical monks in celebration of him, *Arthur*, and other such worthies, had contained themselves within bounds of likelihood; or else that some judges, proportionate to those^m of the *Grecian* games, (who always by publick authority pulled down the statues erected, if they exceeded the true symmetry of the victors) had given such exorbitant fictions their desert. The sweet grace of an enchanting poem (as unimitable *Pindar*ⁿ affirms) often compels belief; but so far have have the indigested reports of barren and monkish invention expatiated out of the lists of truth, that from their intermixed and absurd fauxeties hath proceeded doubt; and, in

some, even denial of what was truth. His sword is kept as a relic in *Arundel* castle, not equalling in length (as it is now worn) that of *Edward III.*'s at *Westminster*.

§. *And for great Arthur's seat her Winchester Whose old round table yet, &c.* (prefers)

For him, his table, order, knights, and places of their celebration, look to the fourth song.

§. *When Portsey weighing well the ill to her might grow.*

Portsey an island in a creek of the *Solent*, coming in by *Portsmouth*, endures the forcible violence of that troublesome sea, as the verse tells you in this fiction of wooing.

Illustrations on the third song.

Discontinuing her first course, the muse returns to *Somerfet* and *Wiltshire*, which lie betwixt the *Severn* and *Hampshire*, as the song here joins them:

§. *From Sarum thus we set, removed from whence it flood.*

Old *Salisbury*, seated north-east from the now famous *Salisbury*, some miles distant, about *Richard coeur de Lion*'s time, had her name and inhabitants, hither translated, upon the meeting of *Avon* and *Aderborn*; where not long after she enjoyed, among other, that glorious rite of admiration for her sumptuous church-buildings. Of that, one of my authors thus:

— in the year of grace
Twelf hundred and to and twenty in the waire place
Of the noble Shunfer of Salisburi his leide the verbe ston
That he not in Christendom waire work non.
Her was Randulf the Regat, and as hept of echon.
He leide him the verbe ston: as was the Dope put on.
The other was ure * ponge king, the thirde as me fere
Way the gode Erie of Salisburi William † the Angeluspi,
The berth was the Contesse, the wite he leide the
Way the † Bishop of Salisburi, and he leide na mo.
* Hen. III. † Willielm. de longa spatha. ‡ Richard Poore.

This work then began, was by *Robert of Bingham*, next succeeding bishop to that excellency, profecuted.

§. *Hath worthily obtain'd that Stonchenge there should stand.*

Upon *Salisbury* plain stones of huge weight and greatness, some in the earth pitched, and in form erected, as it were circular; others lying cross over them, as if their own poize did no less than their supporters give them that proper place, have this name of *Stone-henge*;

But so confus'd that neither any eye
Can count them just, nor reason reason try,
What force brought them to so unlikely
(ground.

As the noble^p *Sidney* of them.

No man knows, saith^q *Huntingdon*, (making them the first wonder of this land, as the author doth) how, or why they came here. The

^k March, Paris post Hen. Huntingd., and under Will. II. it was capital to flut dore.

^l Olymp. a & Nem. ζ. ορτα δ' αλυστοι παρ' εριον μ' οδ' ος.

^m Rob. Gloucest.

ⁿ Rob. Gloucest.

^o In his fones.

^p Hutor, lib. 1.

caule

cause thus take from the *British* story. *Hengist*, under colour of a friendly treaty with *Vortigern* at *Ambesbury*, his fallshoods watchword to his *Saxons* (provided there privily with long knives) being named youn *rext, take your swords*, there traitcrouly flew c. l. x. noble *Britons*, and kept the king prisoner. Some xxx. years after king *Ambrosio* (to honour with one monument the name of so many murdered worthies) by help of *Uterpen-dragon's* forces, and *Merlin's* magick, got them transported from off a plain (others say a hill) near *Naas* in *Kildare* in *Ireland*, hither, to remain as a trophy, not of victory, but of wronged innocence. This *Merlin* persuaded the king that they were medicinal, and first brought out of the utmost parts of *Africa* by giants which thence came to inhabit *Ireland*. *Non est ibi lapis qui medicamento caret, not one of the stones but is good for some: what in physick; as in Merlin's person Geoffrey of Monmouth speaks, whose authority, in this treacherous slaughter of the Britons, I respect not so much as Nennius, Malinesbury, Sigebert, Matthew of Westminster, and others, who report it as I deliver. Whether they be naturally solid or with cement artificially compos'd, I will not dispute. Although the last be of easier credit; Yet I would, with our late historian *White*, believe the first sooner, than that *Ulysses's* ship was by *Neptune* turned into one stone, as it is in the *Odyssies*, and that the *Egyptian* king *Amasis* had a house cut out in one marble (which, by *Herodotus's* description, could not, after the workmanship, have less content than c. l. c. c. xciv. solid cubits, if my geometry fail me not) or that which the *Jews* are not alham'd to affirm of a stone, with which king *Og* at one throw from his head purpos'd to have crush'd all the *Israelites*, had not a lapwing strangely peck'd such a hole through it, that it fell on his shoulders, and by miracle his upper teeth suddenly extended, kept it there fast from motion. It is possible they may be of some such earthy dult as that of *Puzzolo*, and by *Aetna*, which cast into the water turns stony, as *Pliny*, after *Strabo* of them, and other like, remembers. And for certain, I find it reported, that in *Caernarvan* upon *Snowdon* hills, is a stone (which miraculously somewhat more than l. x. years since, rais'd itself out of a lake at the hill's foot) equaling a large house in greatness, and suppos'd not moveable by m. yoke of oxen. For the form of bringing them, your opinion may take freedom. That great one which *Hercules* is wonder'd at for the carriage, was bur *αυα:αι:Θ, a cartload*, which he left for a monument in *Otranto* of *Italy*: and except *Geoffrey of Monmouth*, with some which follow him, scarce any affirm or speak of it, nor *Nennius*, nor *Malinesbury*: the first living somewhat near the suppos'd time.*

§. *Between the Mercian rule, and the West Saxons reign.*

So thinks our antiquary and light of this kingdom; that, to be a limit of those two antient states, sometime divided by *Avon*, which falls into *Severn*, *Wansdike* crossing the shire westward over the plain was first call'd up. *Wodensdike*, the old name is suppos'd from *Woden*; of no less (if not greater) esteem to the *Saxons*, than *Arsaces*, *Pelops*, *Cadmus*, and other such to their posterity; but so, that, I guess it went but for their greatest God *Mercury* (he is call'd rather *Woden*, from *win*, that is, *gain* by *Lipsius*) as the *German* and *English* antiquities discover. And very likely, when this limit was made, that in honour of him, being by name president of ways, and by his office of heraldship *pacifex*, i. e. *peace-maker*, as an old stamp titles him, they call'd it *Wodensdike*; as not only the *Greeks* had their *ἑρμῆος ὁδὸς* *ἑρμῆος ὁδὸς*, statues erected for limits and direction of ways, and the *Latins* their *terminus*; but the antient *Jews* also, as upon interpretation of *מִסְלָח בְּרִינָה* * in the *Proverbs*, i. e. *into an heap of Mercury* (in the vulgar for a heap of stones, in that sense, *Goropius*, in his hieroglyphicks, affirms, somewhat boldly deriving *Mercury* from *merc*, which signifies a limit in his and our tongue, and so fits this place in name and nature. *Stonehenge*, and it not improperly contend, being several works of two several nations antiently hateful to each other; *Britons* and *Saxons*.

§. *To bear two chrysal floods to court her, which apply.*

Willibourne (by the old name the author calls her *Willi*) derived from near *Selwood* by *Warmminster*, with her creeky passage, crossing to *Wilton*, naming both that town and the shire, and on the other side *Avon* taking her course out of *Savernak* by *Marlborough* through the shire southward, washing *Ambesbury* and the *Salisbury*s (now *Salisbury* being her episcopal city) both watering the plain, and furnished with these reasons, are fitly thus personated, striving to endear themselves in her love; and prosecuting this fiction, the muse thus adds;

§. *How that Bath's Avon wax'd imperious through her fame.*

Divers rivers of that name have we; but two of eminent note in *Wiltshire*: One is next before shew'd you, which falls through *Dorset* into the ocean; the other here mentioned hath her head in the edge of *Gloucester*; and with her snaky course, visiting *Malinesbury*, *Chippenham*, *Bradford*, and divers towns of slight note, turns into *Somerset*, passes *Bath*, and

* Girald. Cambrensis topograph. Hibern. dist. 1. cap. 18. chorea gigantum.

be a wilderness, let the Jew have it.

* Powel ad lib. 1. cap. 9. Girald. itinerariu.

Ad Geom. Tacit.

Immunfull, Sax. Mercury. Adam Beemense. cap. 5. & hence Irmingtreate.

Apud Munster. ad Deut. iii. If among them there

Arifot. αὐτὸς ἵναυα δ' αὐτοῦ.

Paulan. Iacopus &

casts herself into *Severn* at *Bristol*. This compendious contention (whose proportionate example is a special elegance for the expressing of diversity, as in the pastorals of *Theocritus* and *Virgil*) is aptly concluded with that point of ancient politick^a observation, that outward common fear is the surest band of friendship.

§. To *Greeklade* whose great name yet vaunts that learned tongue.

The history of *Oxford* in the proctor's book, and certain old verses,^b kept somewhere in this tract, affirm, that with *Brute* came hither certain *Greek* philosophers, from whose name and profession here it was thus called, and as an university afterward translated to *Oxford* (upon like notation a company of physicians retiring to *Lechlade*, i. e. the physician's lake, in this shire, gave that its title, as *J. Rous* adds in his history to *Hen. VII.*) but *Godwin* and a very old *anonymus*, cited by *Br. Twine*, refer it to *Theodore of Tarsus* in *Cilicia* (made archbishop of *Canterbury* by *P. Vitalian* under *Ecbert* king of *Kent*) very skilful in both tongues, and an extraordinary restorer of learning to the *English Saxons*; that he had (among other) *Greek* schools, is certain by *Bede's* affirmation, that some of his scholars understood both *Greek* and *Latin* as their mother language. *Richard* of the *Vies*^c will that *Penda*, king of *Mercland*, first deduced a colony of *Cambridge* men hither, and calls it *Creke-lade*, as other *Kirklade*, with variety of names: but I suspect all; as well for omission of it in best authorities, as also that the name is so different in itself. *Greeklade* was never honoured with *Greek* schools, as the ignorant multitude think, faith^d *Leland*, affirming it should be rather *Creclade*, *Lechelade*, or *Latblade*. Nor methinks (of all) stands it with the *British* story,^e making the tongue then a kind of *Greek* (a matter, that way reasonable enough, seeing it is questionless that colonies antiently derived out of the western *Asia*, *Peloponnesus*, *Hellas*, and those continents into the coast whence *Brute* came, transported the *Greek* with them) that profession of *Gracians* should make this so particular a name.

§. Ascribed to that high skill which learned *Bladud* brought.

You are now in *Somerfetshire*. I doubt not but the true cause is that which is ordinary of other hot springs; nor the sun's heat (saving the author's opinion, which hath warrant enough in others) or agitation of wind, as some will; but either passage through metallick, bituminous, and sulphurous veins, or rather real subterranean fire, as^f *Empedocles* first thought, and with most witty arguments (according to the poetical conceit of *Typhon*^g, buried in *Prochysa*; whereto *Strabo* refers the best baths in *Italy*)

my learned and kind friend Mr. *Lydiat*, that accurate chronologer, in his ingenious philosophy, hath lately disputed. But as the author tells you, some *British* vanity imputes it to *Bladud's* art, which in a very antient fragment^h of rhimes I found expressed: and if you can endure the language and fiction you may read it, and then laugh at it.

Two tunne there beth of bras,
And other two imaked of glas
Sebe sears there both inne
And other thing imaked with gunne:
Quick bymion in them also,
With wild fier imaked thereto:
Sal gemmae and sal petrae,
Sal armonak there is the
Sal albrod and sal alkin
Sal gemmae is mingled with him,
Sal comin and sal almetre bright
That boyneth both day and night,
Al this is in the tonne so
And other things many mo,
And boyneth both night and day
That never quench it ne may
In four wel springs the tonnes liggeth
As the Philosophers us liggeth,
The hete with in, the water without,
Haketh it hot al about,
The two wel springs earneth mere
And the other two beth inner cleere.
There is maked still tuns
That kings bath icluped is.
The rich king *Bladud*
The kings sonne *Lud*,
And when he maked that bath hot
And if him failed oughe
Of that that shoulde thereto,
Perkeneth what he woulde do,
From Bath to London he woulde see
And thulke day seise againe bee
And fetch that thereto blud,
He was quicke, and swift fell
Tho the master was ded
And is soule wend to the Quee
For God ne was not put poore
God deth suffred him bloure.

I will as soon believe all this, as that *S. b. De-vi* or *Julius Caesar* (who never came near it) was author of it, or that he made knights of the *Bath*. They are not wanting which have durst say so.

§. When on this point of earth he bends his greatest force.

From eight in the morning till three (within which time the sun-beams make their strongest angles of incidence) it purges itself (as boiling) of unclean excrements, nor then doth any enter it; which the muse here expresses in a fervent sympathy of love, betwixt the water and the sun, and the more properly, because it had the name of *aquae solis*, waters of the sun.

^a Apud Cal. de antiq. Cantabrig. lib. 2. & cod. nig. Cantabr. apud
^b Curvus Graecus sermo Britannicus Galfred. Monumeth. lib. 1.
^c Ex antiq. sched. ^d Bal. cent. 1. ^e Malines.

^a In *Thucyd.* & *Liv.*
ant. assert. antiq. Oxon.
^b Senec. natural. quest. lib. 3. cap. 24.
bury lib. 2. pontific.
^c Leland. ad cyg. cant. in *Isle*.
^d Ad Cyg. Cant. in *Isle* & *Isid.* var.
^e Pyndar. *Pyth.* a.
^f Antoninus in *itinerario*.

S. With the wonders of the isle that she should not be placed.

Wockey hole, or, *Oehy*, (so called, in my conceit, from *woeg*^k, which is the same with *pie*, signifying a *bollow* or *creaky passage*) in *Mendip hills by Wells*, for her spacious vaults, stony walls, creeping labyrinths, unimaginable caule of posture in the earth, and her neighbours report (all which almost equal herto that *grotta de la^l Sybilla* in the *Apenin* of *Marca Anconitana*, and the *Dutch* song of little *Daniel*) might well wonder she had not place among her country wonders. One that seems to increase *Samuel Beaulan* upon *Nennius*, reckons thirteen by that name, but with vain and false reports (as that of the *Bath* to be both hot and cold, according to the desire of him that wathes) and in some, the author of *Polychronicon* follows him; neither speaking of this. But the last, and *Henry* of *Huntingdon* reckon only four remarkable; the *Peak*, *Stonhenge*, *Chederhole*, and a hill out of which it rains. That wonder of human excellence, *Sir Philip Sidney*, to fit his sonnet, makes six; and to fit that number conceitedly, adds a froward, but chaste, lady for the seventh. And the author here tells you the chiefest.

S. ——— that Froome for her disgrace, Since scarcely ever washed the Colestock from her face.

Out of *Mendip hills Froome* springeth, and through the colepits, after a short course eastward, turns upward to *Bath's Avon*. The fiction of her besmeared face happens the better, in that *Froome*, after our old mother language, signifies fair, as that paradoxal *Becanus*,^m in exposition of the *Egyptian Pyromis* in *Herodotus*,ⁿ would by notation teach us.

S. And Chedder for meer grief his teen he could not wreak.

Near *Axbridge*, *Chedder cleaves*, rocky and vaulted, by continual distilling, is the fountain of a forcible stream (driving twelve mills within an mile's quarter of it's head) which runs into *Ax* derived out of *Wockey*.

S. When not great Arthur's tomb, nor holy Joseph's grave.

Henry II. in his expedition towards *Ireland*, entertained by the way in *Wales*, with bardish songs, wherein he heard it affirmed that in *Glastenbury* (made almost an isle by the river's embracements) *Arthur* was buried betwixt two pillars, gave commandment to *Henry of Blois*, then abbot, to make search for the corps; which was found in a wooden coffin (*Girald* saith oaken, *Leland* thinks alder) some sixteen foot deep; but after they had digged nine foot, they^o found a stone on whose lower side was

fixed a leaden cross (crosses fixed upon the tombs of old christians were in all places ordinary) with his name inscribed, and the letter side of it turned to the stone. He was then honoured with a sumptuous monument, and afterward the skulls of him and his wife *Guinever* were taken out (to remain as separate reliicks and spectacles) by *Edward Longshanks* and *Eleanor*. Of this, *Girald*, *Leland*, *Prise*, divers others, (although *Polydore* make slight of it) have more copious testimony. The bards songs suppose, that after the battel of *Camlan* in *Cornwall*, where traitorous *Mordred* was slain, and *Arthur* wounded, *Morgain le Fay*, a great *Elfin* lady, (supposed his near kinswoman) conveyed the body hither to cure it; which done, *Arthur* is to return (yet expected) to the rule of his country. Read these attributed to the^p best of the bards, expressing as much;

——— *Morgain suscepit honore,
Inque suis thalamis posuit super aurea regem
Fulcra, manuque sibi detexit vulnus bonefle,
Inspectitque diu: tandemque redire salutem
Posse sibi dixit, si fecum tempore longo
Esset, & ipsius vellet medicamine fungi.*

Englished in metre for me thus by the author:

——— *Morgain with honour took,
And in a chair of state doth cause him to repose;
Then with a modest hand his wounds she doth un-
close;
And having searched them well, she had him
not to doubt,
He should in time be cured if he would stay it out,
And would the medicine take that she to him
would give.*

The same also in effect, an excellent^q poet of his time thus singing it.

He is a king crowned in Fairie,
With scepter and sword and with his regally
Shall resort as lord and soveraigne
Out of Fairie and reigne in Britaine;
And repaire againe the round table.
By prophesy Merlin set the date,
Among princes king incomparable
His seat again to Carlon to translate.
The Parchas suster spouse to his fate
His epitaph recordeth so certaine,
Here lieth K. Arthur that shall raigne againe.^r

Worthily famous was the abbey also from *Joseph of Arimathea* (that, *uxoribus* *Bartholomae*, noble counsellor, as *St. Mark* calls him) here buried, which gives proof of christianity in the isle before our *Lucius*. Hence in a charter of liberties by *Hen. II.* to the abbey (made in presence of *Heraclius* patriarch of *Jernsalem*, and others) I read, *Olim a quibusdam mater sanctorum dicta est, ab aliis tumultus sanctorum, quam ab ipsis discipulis domini aedificatam & ab ipso domino dedicatam primo fuisse venerabilis habet antiquorum autoritas*. It goes for

^k Beat. Rhennan. lib. 2. rer. Germanic.

nicon. Glasconient.

^l Tacitlin. ap. Prif. defend. hist. Brit.

refert Alanus de insulis illud Merlini vaticinium. Exitus epus dubius erit.

^m

ⁿ

^o Hermathen. lib. 6.

^p Euterpe.

^q Cloro.

^r Dan Ldgat. lib. 3. vers. Boccat. cap. 24. Naenias ad has

hic jacet Arturus rex quondam, rexque futurus

currit

current truth that a hawthorn thereby on Christmas-day always blossometh; which the author tells you in that, *Trees yet in winter, &c.* You may call this into the account of your greatest wonders.

§. *Imbrac'd by Selwood's son her flood the lovely Bry.*

Selwood sends forth *Bry*, which after a winding course from *Bruton*, (so called of the river) through part of *Sedgemore*, and *Andremore*, comes to *Glastenbury*, and almost in-fles it; thence to *Gedney* moor, and out of *Brent* marsh into *Severn*.

§. *The nearest neighb'ring floods to Arthur's ancient seat.*

By south *Cadbury*, is that *Camelot*; a hill of a mile compass at the top, four trenches circling it, and betwixt every of them an earthen wall; the content of it, within about twenty acres, full of ruins and relics of old buildings. Among *Roman* coins there found, and other works of antiquity, *Stow* speaks of a silver horsehoe there digged up in the memory of our fathers. 'Dii boni (saith *Leland*) quot hic profundissimarum fossarum? Quot hic egestae terrae valla? Quae demum praecipitia? atque ut paucis finiam, videtur mihi quidem esse & artis & naturae miraculum. The workmanship of the ditches, walls, and strange steepness of them, makes it seem a wonder of art and nature. Antique report makes this one of *Arthur's* places of his round table, as the muse here sings. But of this, more in the next canto.

Illustrations on the fourth song.

OVER *Severn* (but visiting *Lundy*, a little isle betwixt *Hartland* and *Goven* point) you are transported into *Wales*. Your travels with the muse are most of all in *Monmouth*, *Glamorgan*, and the fourth maritime shires.

§. *And wantonly to hatch the birds of Ganymede.*

Walter Baker, a canon of *Osney*, (interpreter of *Thomas de la Moor's* life of *Edward II.*) affirms, that it commonly breeds conies, pigeons, & *struconas*, quos vocat *Alexander Nechamus* (so you must read, not *Necbristum*, as the *Frankfort* print senselessly mistook with *Conday*, for *Lundy*) *Ganymedis* aves. What he means by his birds of *Ganymede*, out of the name, unless eagles or ostriches (as the common fiction of the *Catamite's* ravishment, and this *French Latin* word of the translator would) I collect not. But rather read also *Palamedis* aves, i. e. cranes, of which *Necham* indeed hath a whole chapter; what the other should be, or whence reason of the name comes, I confess I am ignorant.

§. *Clear Towridge whom they feared would have estranged her fall.*

For the rising near *Hartland*, wantonly runs to *Hatherlay* in *Devon*, as if the would to the southern ocean; but returning, there at last is discharged into the *Severn* sea.

§. *Tet hardly upon Powle they dare their hopes to lay.*

Wales had ^u her three parts, north *Wales*, south *Wales*, and *Powis*. The last, as the middle betwixt the other, extended from *Cardigan* to *Shropshire*; and on the *English* side, from *Chester* to *Hereford* (being the portion of *Anarawd*, son to great *Roderick*) bears this appellation, because it comprehends, for the most, both nations and both tongues. But see for this division to the seventh long.

§. *Nor Rofs for that too much she aliens doth respect.*

Under *Henry I.* a colony of *Flemings* driven out of their country by inundation, and kindly received here in respect of that alliance which the king had with their earl (for his mother *Maud* wife to the conqueror, was daughter to *Baldwin* earl of *Flanders*) afterward upon difference betwixt the king and earl *Robert*, were out of divers parts, but especially *Northumberland*, where they most of all (as it seems by *Hoveden*) had residence, constrained into *Rofs* ^u in *Pembroke*, which retains yet in name and tongue, express notes of being aliens to the *Cambro-Britons*. See the author in his next song.

§. *That Talieffin once which made the rivers dance.*

Talieffin (not *Telefin*, as *Bale* calls him) a learned bard, stiled ^u *Ben Beirdd*, i. e. the chiefest of the bards, master to *Merlin Sylvestre*, lived about *Arthur's* reign, whose acts his muse hath celebrated.

§. *With Lhu and Lhogor given, to strengthen them by Gower.*

Betwixt *Netb* and *Lhogor* in *Glamorgan* is this *Gower*, a little province, extended into the sea as a cherfonels; out of it on the west, rise these two rivers meant by the author.

§. *That at the Stethua oft obtained a victor's praise.*

Understand this *Stethua* to be the meeting of the *British* poets and minstrels, for trial ^u of their poems and musick sufficiencies, where the best had his reward, a silver harp. Some example is of it under *Rees ap Grifith*, prince of south *Wales*, in the year *1103*. A custom so good, that, had it been judiciously observed, truth of story had not been so uncertain; for

^u De rerum natura lib. 1.

^u Girald. descript. cap. 2. & Porel ad Caradoc. Llancharvan.

^u So called perhaps, because it is almost

in-fled within the sea, and Lhogor as *Rolay* in Scotland, extending almost an yle, Buchanan, hist. 5, in *Eugenio* 4.

^u Erit. in descript.

^u Antiqua hujusmodi certamina fuisse docemur a scholasticis. Aristoph. & Di. Cypriano ferm. de aleator.

there was, by suppoſe, a correction of what was faulty in form or matter, or at leaſt a cenſure of the hearers upon what was recited. As, according to the *Roman* uſe it is ^a noted, that *Girald* of *Cambria*, when he had written his topography of *Ireland*, made at three ſeveral days, ſeveral recitals of his three diſtincti- ons in *Oxford*; of which courſe, ſome have wiſhed a recontinuance, that either amendment of opi- nion, or change of purpoſe in publiſhing, might prevent blazoned errors. The ſorts of theſe poets and miniſtrels out of doctor *Poſſet*'s in- terſerted annotations upon *Caradoc Lhancar- van*, I note to you; Firſt *beirdhs*, otherwiſe *pydyds* (called in *Athenaeus*, *Lucan*, and o- thers, *bards*) who, ſomewhat like the *ῥαψωδοί*, among the *Greeks*, ſortia *virorum illuſtrium facta heroica compoſita verſibus cum dulcibus lyrae modulis* ^b cantabant, i. e. *did ſing the valiant deeds of famous men, to the ſweet melody of the harp*; which was the chiefſt form of the antientſt muſick among the *Gentiles*, as ^c *Zarlino* hath fully collected. Their charge alſo, as heralds, was to deſcribe and preſerve pedigrees, wherein their line aſcendant went from the *Petrucius* to *B. M.* thence to *Sylvius* and *Aſcanius*, from them to *Adam*. Thus *Girald* reporting, hath his *B. M.* in ſome copies by ^d tranſcription of ignorant monks (forgetting their tenet of perpetual virginity, and that relation of *Theodoſius*) turned into *be- atam Mariam*, i. e. *St. Mary*, whereas it ſtands for *Belinum magnum* (that was *Heli*, in their writers, father to *Lud* and *Caffibelin*) to whom their genealogies had always reference. The ſecond are, which play on the harp and crowd; their muſick for the moſt part came out of *Ireland* with *Gruffith* ap *Conan*, prince of north *Wales*, about king *Stephen*'s time. This *Gruffith* reformed the abuſes of thoſe miniſtrels, by a particular ſtatute, extant to this day. The third are called *ateanceid*; they ſing to inſtruments plaid on by others. For the *Englyſhs*, *Cp-dhs* *Q-dhs*; the firſt are couplets interchanged of ſixteen and fourteen feet, called *paladitres* and *penſels*, the ſecond of equal tetrameters, the third of variety in both rhyme and quantity. Subdiviſion of them, and better information may be had in the elaborate inſtitutions of the *Cumraeg* language by *David ap Rees*. Of their muſick antiently, out of an old writer read this: *Non uniformiter, ut alibi, ſed multipliciter multiſque modis & modulis cantilenas emittunt, adeo ut, turba canentium, quot videas capita tot audias carmina, discriminaque vo- cum varia, in unam denique ſub B. mollis dulcedine blanda, conſonantiam & organicam convenientiam melodiam*. A good muſician will better underſtand it, than I that tranſcribe it. But by it you ſee they eſpecially affected the mind compoſing *Dorick*, which is ſhewed in that of an old ^e author, affirming that *ἡμῶν οὐκ ἔστιν* i. e. *to make them gentle natured,*

the western people of the world conſtituted uſe of muſick in their aſſemblies, though the ^f *Iriſh* (from whence they learned) were wholly for the ſprightly *Phrygian*. See the next canto.

S. And humbly to S. George, their country's pa- tron, pray.

Our author (a judgment-day thus appointed betwixt the water-nymphs) ſeems to allude to the courſe uſed of old with us, that thoſe which were to end their cauſe by combat, were ſent to ſeveral ſaints for invocation, as in our ^h law-an- nals appears. For ⁱ *S. George*, that he is patron to the *Engliſh*, as *St. Denis*, *St. James*, *St. Pat- rick*, *St. Andrew*, *St. Anthony*, *St. Mark*, to the *French*, *Spaniſh*, *Iriſh*, *Scottiſh*, *Italian*, *Vene- tian*, ſcarce any is, that knows not who he was, and when the *Engliſh* took him, is not ſo maniſeſt. The old martyrologies give, with us, to the honour of his birth the twenty third of *April*. His paſſion is ſuppoſed in *Diocleſian*'s perſecution. His country *Cappadocia*. His acts are divers and ſtrange, reported by his ſervant *Pſiſcrates*, *Simeon Metaphraſtes*, and lately collected by *Surius*. As for his knightly form, and the dragon under him, as he is pictured in *Beryth*, a city of *Cyprus*, with a young maid kneeling to him, an unwarrantable report goes, that it was for his martial delivery of the king's daughter from the dragon, as *Heſione* and *Andromeda* were from the whales by *Hercules* and *Perſeus*. Your more neat judgments, finding no ſuch matter in true antiquity, rather make it ſymbolical than truly proper. So that ſome account him an allegory of our Saviour *Chriſt*; and our admired ^k *Spencer* hath made him an emblem of religion. So *Chaucer* to the knights of that order.

— but for Gods pleaſance
And his mother, and in ſignifiſſance
That ye den of *S. Georges* liberie
Doeth him ſervice and knightly obeſſance
For *Chriſts* cauſe to his, well known yeſe.

Others interpret that picture of him, as ſome country or city (ſignified by the virgin) im- ploring his aid againſt the devil, characted in the dragon. Of him you may particularly ſee, eſpecially in *Uſuard*'s martyrology, and *Baro- nius* his annotations upon the *Roman* kalendar, with *Erhard Celly* his deſcription of *Frederick* duke of *Witteberg*'s inſtallation in the garter, by favour of our preſent ſovereign. But what is delivered of him in the legend, even the church of *Rome* ^l hath diſallowed in theſe words; *That not ſo much as any ſcandal may riſe in the holy Roman church, the paſſions of S. George, and ſuch like, ſuppoſed to be writ- ten by hereticks, are not read in it*. But you may better believe the legend, than that he was a *Coventry* man born, with his *Caleb* lady of

^a Camd. in epiſt. Fulconi Grevil. ad edit. Anglic. Norm. &c.

& c.

^d Dan. Poſſet, ad *Girald.* deſcript. cap. 3.

^e *Girald.* topog. diſt. 3. cap. 11.

^f 30 Ed. III. fol. 20.

^g num. forte *ῥαψωδοί* & *ῥαψωδοί*, quid. n. *Trophiophorus*?

^h diſt. 15. *Gelaſius* pp.

ⁱ Ammian. Marcellin. hiſt. 14.

^j Suid. in *her.*

^k Marſian. Heraclot. in *πνεύματι*.

^l *Trophiophorus* dictus in menologio *Græco* apud *Baro-*

^m *Jarry* *Quen.* lib. 1.

ⁿ *C. Gaſſia Rom. eccleſiæ.*

the woods, or that descended from the *Saxon* race, and such like; which some *English* fictitious deliver. His name (as generally ^a also *St. Maurice* and *St. Sebastian*) was antiently called on by christians as an advocate of victory, (when in the church that kind of doctrine was) so that our particular right to him (although they say ^b king *Arthur* bare him in one of his banners) appears not until *Ed. III.* consecrated to *St. George* the knightly order of the garter, ^c soon after the victory at *Calais* against the *French*, in which his invocation was by *St. Edward*, by *St. George*. Some authority ^d refers this to *Richard coeur de Lion*, who supposed himself comforted by *St. George* in his wars against the *Turks* and *Hagarens*. But howsoever, since that, he hath been a patron among others, as in that of *Frederick III.* institution ^e of the quadripartite society of *St. George's* shield, and more of that nature, you find. And under *Hen. VII.* it was enacted, ^f that the *Irish* should leave their *crumabo* and *butterabo*, words of unlawful patronage, and name themselves as under *St. George*, and the king of *England*. More proper is *S. Dewy* (we call him *St. David*) to the *Welsh*. Reports of him affirm that he was of that country, uncle to king *Arthur* (*Bale* and others say, gotten upon *Melaria* a nun, by *Xantus* prince of *Cardigan*) and successor to *Dubrice* archbishop of *Caerleon* upon *Uske* (whereto ^g a long time the *British* bishopricks, as to their metropolitick see, were subject) and thence translated with his nephew's consent the primacy to *Menevia*, which is now *St. David's* in *Pembroke*. He was a strong oppugner of the *Pelagian* heresy. To him our country calenders give the 1st of *March*, but in the old martyrologies I find him not remembered: yet I read that ^h *Calixtus II.* first canonized him. See him in the next canto.

S. The sacred virgin's shape he bare for his device.

Arthur's ^a shield, *pridwen*, or his banner, had in it the picture of our lady, and his helm an engraven dragon. From the like form was his father called *Uter-pen-dragon*. To have terrible crests or engraven beafts of rapine (*Herodotus* and *Strabo* fetch the beginning of them, and the bearing of arms from the *Carians*) hath been from inmost antiquity continued; as appears in that epithet of *γερωνόρας*, proper to *Minerva*, but applied to others in *Aristophanes*, and also ^b in the *Theban* war. Either hence may you derive the *English* dragon now as a supporter, and usually pitched in fields by the *Saxon*, *English*, and *Norman* kings for their standard, (which is frequent in *Hoveden*, *Matthew Paris*, and *Floriensis*) or from the *Romans*, who after the *minotaur*, *borse*, *eagle*,

and other their antique ensigns took this beaft; or else imagine that our kings joined in that general consent, whereby so many nations bare it. For by plain and good authority, collected by a great ^c critick, you may find it affirmed of the *Affrians*, *Indians*, *Scythians*, *Persians*, *Dacians*, *Romans*, and of the *Greeks* too for their shields, and otherwise; wherein *Lipsius* unjustly finds fault with *Isidore*, but forgets that in a number of *Greek* ^d authors is copious witness of as much.

S. They sing how he himself at Badon bare the day.

That is *Bausfedowen* in *Somerset*, (not *Blackmore* in *Torkshire*, as *Polydore* mistakes) as is expressly proved out of a ms. *Gildas* ^e, different from that published by *Joscelin*.

S. That scarcely there was found a country to the pole.

Some, too hyperbolick, stories make him a large conqueror on every adjacent country, as the muse recites; and his seal, which *Leland* says he saw in *Westminster-Abbey*, of red wax, pictured with a mound, bearing a cross in his left hand, (which was first ^f *Justinian's* device; and surely, in later time, with the seal counterfeited and applied to *Arthur*: no kings of this land, except the Confessor, before the conquest ^g ever using in their charters more than subscription of name and crosses) and a scepter sleury in his right, calls him *Britanniae*, *Galliae*, *Germaniae*, *Daciae*, *imperator*, *Emperor of Britain*, *Gaul*, *Germany*, and *Denmark*; for so they falsely turned *Dacia*. The bards songs have, with this kind of unlimited attribute so loaden him, that you can hardly guess what is true of him. Such indulgence to false report hath wronged many worthies, and among them even that great *Alexander* in prodigious suppositions (like *Stichus* ^h his geography, laying *Pontus* in *Arabia*) as *Strabo* often complains; and some idle monk of middle time is so impudent to affirm, that at *Babylon* he erected a column, inscribed with *Latin* and *Greek* verses, as notes of his victory; of them you shall taste in these two:

*Anglicus & Scotus Britonum superque caterva
Irlandus, Flander, Cornwallis, & quoque Nor-
(guay.*

Only but that *Alexander* and his followers were no good *Latinists*, (wherein, when you have done laughing, you may wonder at the decorum) I should censure my lubberly versifier to no less punishment than *Marfias* his excoication. But for *Arthur*, you shall best know him in this elogy. *This is that Arthur of whom the Britons even to this day speak so idly; a man right worthy to have been celebrated by true*

^a Ord. Rom. de divin. officiis apud Baronium in martyrolog.

^b Ed. III. Fabian puts it before this year, but erroneously.

^c Wie geſchicht alt d. Großen ſchiltz. Martin. Cruf. annal. Suevic. part. 3. lib. 9.

^d Polychronic. lib. 1. cap. 12.

^e Aſcholi. terj. vel. Oue. Euſepid. in Phoenicis.

^f Jlad. A. Suid. Epimened. Hefiod. ^g Ann. ^h Heza. Plutarch. Lyland. Euſepid. in Iſpy. & in ⁱ Aſia.

^j Juſtinian. ^k Angluſius. ^l Plaut. in Stichos.

^a Harding cap. 72.

^b Ex antiq. ms. ap. Camd. in Berkſch.

^c Cid. ed. xxxviii.

^d Hen. VII. in ſtatutis Hibernicis.

^e Gallies lib. 6. cap. 3. & lib. 7. cap. 2.

^f Pindar. Pythion. ad. v. Homer.

^g Camden.

^h Suid. in

story, not false tales, seeing it was he that long time upheld his declining country, and even inspired martial courage into his countrymen; as the monk of Malmesbury, of him;

§. The Pentecost prepared at Caer-leon in his court.

At *Caer-leon* in *Monmouth*, after his victories, a pompous celebration was at *Whitson-tide*, whither were invited divers kings and princes of the neighbouring coasts; he with them, and his queen *Guinever* with the ladies, keeping those solemnities in their several conclaves. For so the *British* story makes it according to the *Trojan* custom, that in festival solemnities, both sexes should not sit together. Of the *Trojans* I remember no warrant for it; but among the *Greeks* one *Sphyromachus* * first instituted it. Tournaments and jousts were their exercises, nor vouchsafed any lady to bestow her favour on him, which had not been thrice crowned with fame of martial performance. For this order, which herein is delineated, know, that the old *Gauls*, whose customs and the *British* were near the same, had their orbicular tables to avoid controversy of precedence (a form much commended by a late writer for the like distance of all from the salt, being center, first, and last, of the furniture) and at them every knight attended by his elquire (*εταροφύρις* * *Athenaeus* * calls them) holding his shield. Of the like in *Henry III. Matthew Paris*, of *Mortimer's* at *Kelingworth*, under *Ed. I.* and that of *Windfor*, celebrated by *Ed. III. Walsingham* speaks. Of the *Arthurian* our histories have scarce mention. But *Havillan's Archibrenius*, *Robert of Gloucester*, *John Lidgate* monk of *Bury*, and *English* rhymes in divers hands sing it. It is remembered by *Leland*, *Camden*, *Volateran*, *Philip of Bergamo*, *Lilly*, *Aubert Mirce*, others, but very diversly. *White of Basingstoke* defends it, and imagines the original from an election by *Arthur* and *Howel* king of *Armorick Britain*, of six of each of their worthiest peers to be always assistant in council. The antiquity of the earldom of *h Mansfield* in old *Saxony* is hence affirmed, because *Heger* earl thereof was honoured in *Arthur's* court with this order. Places of name for residence of him and his knights were this *Caer-leon*, *Winchester*, (where his table is yet supposed to be, but that seems of later date) and *Camelot* in *Somerset*. Some * put his number *xii.* I have seen them antiently pictured *xxiv* in a poetical story of him; and in *Denbighshire*, *Stow* tells us, in the parish of *Lansannan*, on the side of a stony hill is a circular plain, cut out of a main rock, with some *xxiv* seats unequal, which they call *Ar-*

thur's round table. Some catalogues of arms have the coats of the knights blazoned; but I think with as good warrant as *Rablais* can justify, that *Sir Lancelot du Lac* slays hories in hell, and that, *Tous les chevaliers de la table ronde estoient pourvus gaigne-deniers tirans la rame pur passer les rivières de Coccyte, Phlegeton, Styx, Achéron, & Lethe, quand messieurs les diables se veulent esbatre sur l'eau, come sont les basteillers de Lyon & gondoliers de Venise. Mais pour chacune passade ils n'ont qu'un nazarde, & sur le soir quelque morceau de pain chaumeny. The knights of the round table use to ferry spirits over Styx, Achéron, and other rivers, and for their fare have a fillop on the nose, and a piece of mouldy bread.* Of them, their number, exploits, and prodigious performances, you may read *Caxton's* published volume, digested by him into *xxi* books, out of divers *French* and *Italian* fables. From such I abstain, as I may.

§. And for Caermardhin's sake —

Two * *Merlins* have our stories; one of *Scotland* commonly titled *Sylvester*, or *Caledonius*, living under *Arthur*; the other *Ambrosius*, (of whom before) born of a nun, (daughter to the king of *South-wales*) in *Caermardhin*, not naming the place (for rather in *British* his name is *Merdin*) but the place (which in *Prose* is *Maridunum*) naming him; begotten, as the vulgar, by an *Incubus*. For his burial (in supposition as uncertain as his birth, actions, and all of those too fabulously mixed stories) and his lady of the lake, it is by liberty of profession laid in *France* by that *Italian* *Aristo*; which perhaps is as credible as some more of his attributes, seeing no perfwading authority, in any of them, rectifies the uncertainty. But for his birth see the next song, and, to it, more.

§. Tuifco Gomer's son from unbuilt Babel brought.

According to the *m* text, the *Jews* affirm that, all the sons of *Noah* were dispersed through the earth, and every one's name left to the land which he possessed. Upon this tradition, and false *Berosus's* testimony, it is affirmed, that *Tuifco* (son of *Noah*, gotten with others after the *m* flood upon his wife *Arezia*) took to his part the coast about *Rhine*, and that thence came the name of *Teutschland* and *Teutsch*, which we call *Dutch*, through *Germany*. * Some make him the same with *Gomer*, eldest son to *Japhet* (by whom these parts of *Europe* were peopled) out of notation of his name, deriving *Tuifcon* or *Tuifon* (for so *Tacitus* calls him) from the hood son, i. e. the eldest son. Others (as the author here) suppose him son to *Gomer*, and take *r* him for *Ashenaz* (remembered by

* Scholiast ad Aristophan. *εταροφύρις* & *Σύλλας*.

which is expressed in the word *scholarius* in *Psalm*, *Wansford*, lib. 2. de *gest. Longobard*, cap. 22.

* Hoppernd & Spangberg, apud *Orellium* in *Mansfield*. * *Prif. delect. hult. Brit. & cadair Arthur*, i. e. *Arthur's chair* in *Brethelney*.

Giral. itin. Camb. cap. 2. & *Arthur's* elven in *Stirling* of *Scotland*.

cap. 8.

* Orlund. *Furor*, cant. 2.

* *Goropius* in *Indolofy* thic.

* *Jodoc. Willich. com.* ad *Tacit. Germaniam* & *Pantaleon*, lib. 1. *propolograph*.

* *Gemof* halogaph, lib. 3. cap. 9.

* *Gen. x.*

* *Gen. x.*

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* *Gen. x.*

* *Armigri*.

* *Dionysoph. lib. 2.*

* *Dionysoph. lib. 2.*

* *Dionysoph. lib. 2.*

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* *Dionysoph. lib. 2.*

* *Dionysoph. lib. 2.*

* *Dionysoph. lib. 2.*

Moses as first son to Gomer, and from whom the Hebrews call the Germans ^a *Aschenazim*) whose relics probably indeed seem to be in *Tuifco*, which hath been made of *Aschen*, either by the Dutch prepositive article *the*, or *the*; as our *the* (according to *Delecto* for ^b *Atergatis*, which should be *Adardaga*, in *Ctesias*; and *Danubius* for *Adubenus* in *Festus*, perhaps there corrupted, as *Joseph Scaliger* observes; as *Theudibald* for *Ildibald* in *Procopius*, and *Dicencus* for *Cencus* among the *Getes*) or through mistaking of *α* for *υ*, or *η* in the Hebrew, as in *Rhodanum* ^c for ^d *ῥ* being *Dodanum*, and in *Chalibes* and *Alybes* for *Tbalyses*, from *Tubah*, by taking *η* or *α* for *η*; for in ruder manuscripts by an imperfect reader, the first mistaking might be as soon as the rest. I conjecture it the rather, for that in most histories diversity with affinity betwixt the same-meant proper names (especially eastern as this was) is ordinary; as *Megabyzus* in *Ctesias*, is *Bacabafus* in *Justin*, who calls *Aaron*, *Aruas*, and *Herodotus* his *Smerdis*, *Mergidis*; *Afarbadon*, *Coras*, and *Eslber* in the scriptures, are thus, *Sardanapalus*, *Cyrus*, and *Ameftis*, in the Greek stories; *Eporedorix*, *Amiborix*, *Ariminius*, in *Caesar* and *Sueton*, supposed to have been *Frederick*, *Henry*, *Herman*; divers like examples occur; and in comparison of *Arrian* with *Q. Curtius* very many; like as also in the life of *St. John* the evangelist, antiently ^e written in *Arabic*, you have *Asubafianufus*, *Thitbimfe*, *Damthianufus*, for *Vespasian*, *Titus*, *Domitian*, and in our stories, *Androgeus* for *Caesar's Mandubratius*. From *Tuifco* is our name of *Tuesday*; and in that too, taking the place of *Mars* (the most fiery star, and observe withal that against the vulgar opinion the planetary account of days is very ^f antient) discovers affinity with *Aschenaz*, in whose notation (as ^g some body observes) was signified *fire*.

S. They Saxons first were called——

So a *Latin* rhyme in ^h *Engelhusse* also;

*Quippe brevis gladius apud illos Saxa vocatur,
Unde sibi Saxo nomen traxisse putatur.*

Although from the *Sacans*, or *Sagans*, a populous nation in *Asia* (which were also *Scythians*, and of whom an old ⁱ poet, as most others in their epithets and passages of the *Scythians*,

Τῆς Σάκας φοβούμενος ἃ μάλιστα ἄλλοι ἰσχυροὶ
Τοῦ κτήτος, ὃ γὰρ φοβούμενος ἀνέμωλια βάλλει.

*The shooting Sacae none can teach them art;
For what they loosed at never escapes their dart.*

a faculty for which the *English* have had no small honour in their later wars with the *French*) both *Goropius*, with long argument in his *Bece-*

selana, our judicious *Camden*, and others, will have them, as it were, *Sacae's sons*. According hereto is that name of ^j *Sacafena*, which a colony of them gave to part of *Armenia*, and the ^k *Sagones* in *Scythia* on this side of *Imaus*. However, the author's conceit thus chosen is very apt, nor disagreeing to this other, in that some community was betwixt the name of *Sacae* or *Sagae*, and a certain sharp weapon called *sagaris*, used by the *Amazons*, *Sacans*, and *Persians*, as the Greek ^l stories inform us.

S. The Britons here allur'd to call them to their aid.

Most suppose them sent to by the *Britons*, much subject to the irruptions of *Picts* and *Scots*, and so invited hither for aid; but the stories of *Gildas* and *Nennius* have no such thing, but only that there landed of them (as banished their country, which *Geoffrey* of *Monmouth* expresses also) three long boats in *Kent* with *Horse* and *Hengist* captains. They afterward were most willingly requested to multiply their number by sending for more of their countrymen to help king *Vortigern*, and under that colour, and by *Ronix* (daughter to *Hengist*, and wife to *Vortigern*) her womanish subtlety, in greater number were here planted. Of this, more large in every common story. But to believe their first arrival rather for new place of habitation, than upon embassy of the *Britons*, I am persuaded by this, that ^m among the *Cimbrians*, *Gauls*, *Goths*, *Dacians*, *Scythians*, and especially the *Sacans* (if *Strabo* deceive not; from whom our *Saxons*) with other northern people, it was a custom upon numerous abundance to transplant colonies; from which use the *Parthians* (sent out of *Scythia*, as the *Romans* did their ⁿ *ver sacrum* retain that name, signifying banished (says *Trogus*) not unlikely from the Hebrew *pharatz* ^o, which is to separate, and also to multiply in this kind of propagation, as it is used in the promise to *Abraham*, and in *Isaiah's* consolation to the church. Here being the main change of the *British* name and state, a word or two of the time and year is not untimely. Most put it under *co. xi. ix.* (according to *Bede's* copies and their followers) or *co. l.* of Christ; whereas indeed by apparent proof it was in *co. xxviii.* and the *iv.* of *Valentinian* the emperor. So *Prife* and *Camden* (out of an old fragment annexed to *Nennius*) and before them, the author of *fasciculus temporum* have placed it. The error I imagine to be from restoring of worn out times in *Bede* and others, by those which fell into the same error with *Florence* of *Worcester* and *Marian* the *Scot*, who begin the received christian account but *xii* years before the passion, thereby omitting *xxii.* For although *Marian's* published chronicle (which is but ^p a desolation

^a Elias Levin, in Thibid. Aris Mont. in Peleg.

^b Pet. Kirftenius grammaticae Arabicae subjunxit.

^c Strab. lib. 7. c. 6. & c. 10. de aliis quae hic congerimus.

^d Broughton in concens. praef.

^e Melancthon ap. Becan. in Indocycli.

^f Ap. Camdenum.

^g Dionys. Afer. in Asia.

^h Scalig. in prolegom. ad emendat. temp.

ⁱ Strabo lib. 11.

^j Ptolem.

^k Strabo lib. 11.

^l Justin. lib. 24. & 41.

^m Herodot.

ⁿ Clio. Wallingf. Hypodig. Neust. Gemetent. lib. 1. cap. 4.

^o Sabinus & Graecis morem hunc fuisse meeni legisse me apud Varroem & Columellam.

^p Festus in eod. & Maurentius.

^q Gen. xxviii. 14. 114. liv. 3.

^r Malmesb. lib. 4. de Pontificib.

by Robert of Lorrain bishop of Hereford under Hen. I. and an epitome of *Marian* goes near from the ordinary time of incarnation under *Augustus*, yet he lays it also, according to the Roman abbot *Dionysius*, in the xxiii^{d} year following, which was rather by taking advantage of *Dionysius* his error, than following his opinion. For when he (about *Justinian's* time) made his period of v. xxxii years of the golden number and cycle of the sun multiplied, it fell out so in his computation that, the xv moon following the *Jews* passover, the dominical letter, *Friday*, and other concurrents, according to ecclesiastical tradition, supposed for the passion, could not but be in the h^{th} xii year after his birth (a lapse by himself much repented) and then supposing Christ lived xxxiv years, xxii must needs be omitted; a collection directly against his meaning, having only forgotten to fit those concurrents. This account (in itself, and by the abbot's purpose, as our vulgar is now, but with some little difference) erroneously followed, I conjecture, made them, which too much desired correction, add the supposed evangelical xxii years to such times as were before true; and so came cccc. xxviii. to be cccc. xl. ix. and cccc. l. which *White of Basingstoke* (although aiming to be accurate) unjustly follows. Subtraction of this number, and, in some, addition (of addition you shall have perhaps example in amendment of the c. l. vi. year for king *Lucius* his letters to *pp. Eleutherius*) will rectify many gross absurdities in our chronologies, which are by transcribing, interpolation, misprinting, and creeping in of antichronisms, now and then strangely disordered.

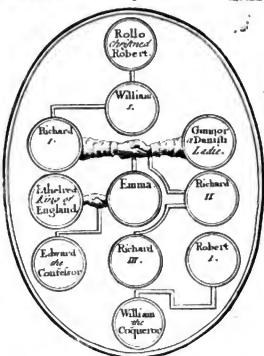
- §. To get their seat in Gaul which on *Nueftria*
And a little after, (light.
§. Called Northernmen from the north of Germany
that came.

What is now *Normandy* is, in some, stiled *Nueftria* and *Nueftria* corruptly, as most think, for *Weftria*, that is, *Weftrich*, i. e. the west kingdom (confined antiently betwixt the *Meuse* and the *Loire*) in respect of *Austrich* or *Osttrich*, i. e. the east kingdom, now *Lorrain*, upon such reason as the arch-dukedom hath his name at this day. *Rollo*, son of a *Danish* potentate, accompanied with divers *Danes*, *Norwegians*, *Scythians*, *Goths*, and a supplement of *English*, which he made of king *Albelsan*, about the year v. cccc. made transmigration into *France*, and there, after some martial disorders, honoured in holy tincture of christianity with the name of *Robert*, received¹ of *Charles the Simple* with his daughter (or sister) *Gilla*, this tract as her dower, containing (as before) more than *Normandy*. It is² reported, that when the bishops at this donation required him to kiss the king's foot for homage, after scornful refusal, he commanded one of his knights to do it; the knight took up the king's

leg, and in straining it to his mouth, overturned him; yet nothing but honourable respect followed on either part.

- §. That as the conqueror's blood did to the conquered run.

Our author makes the *Norman* invasion a re-uniting of severed kindred, rather than a conquest by a meer stranger, taking argument as well from identity of countryship (being all *Germans* by original, and the people of¹ the *Cimbrica Chersonesus*, now *Denmark*, antiently called *Saxons*) as from contingency of blood betwixt the *Engle-Saxon* kings, and the *Norman* dukes thus expressed*.



Object not that duke *Robert* got the Conqueror upon *Arletta* (from whom perhaps came our name of *barlot*) his concubine, nor that *con-fanguinitatis & agnationis jura a patre tantum & legitimis nuptiis oriuntur*, right of blood and kindred comes only by lawful marriage, as the civil law, and upon the matter the *English* also defines; but rather allow it by law of nature and nobility, which justifies the bastards bearing of his father's coat, distinguished with a bend sinister: *Nicholas Opton* calls it *issura*, *eo quod finiditur a patria haereditate*, a division, because he is separated from his father's inheritance; which is but his conceit; and read *Heuter's tract*, *de libera hominis nativitate*, where you shall find a kind of legitimization of that now disgraceful name *bastard*; which in more antique times was as a proud title, inserted in the stile of great and most honourable princes. Pretending this consanguinity, *S. Edward's* adoption, and king *Harold's* oath, aided by successful arms, the *Norman* acquired the *English* crown; although *William of Poitiers* affirms, that his death-bed he made protestation, that his

¹ Paul. de Middleburgo part 2. lib. 6.

Gemincent. lib. 2. cap. 17.

² ff. Unde cognati. 4. spurius & tit. de grad. affil. l. 4. non facile.

¹ Marcian. Heracleon. in *arera*. G.

² ff. Unde cognati. 4. spurius & tit. de grad. affil. l. 4. non facile.

¹ Paul. AEmilius. hist. Franc. 3.

² Gemincent. lib. 2. cap. 16. & lib. 3. cap. 18.

³ Hist. Cadomen.

⁴ Guill.

⁵ Hist. Cadomen.

⁶ Hist. Cadomen.

right

right was not hereditary, but by effusion of blood, and loss of many lives.

§. Who him a daughter brought, which heaven did strangely spare.

After composition of French troubles Hen. I. returning into England, the ship wherein his sons William and Richard were, betwixt Barbeslew and Southampton was cast away, so that heaven only spared him this issue Maud the empress, married, at last, to Geoffrey Plantagenet earl of Anjou, from whom in a continued race through Hen. II. (son to this Maud) until Rich. III. that most noble surname possessed the royal throne of England.

Illustrations on the fifth song.

IF you ever read of, or, vulgarly understand, the form of the ocean, and affinity betwixt it and rivers, you cannot but conceive this poetical description of Severn; wherein Amphitrite is supposed to have given her a precious robe; very proper in the matter self, and imitating that * father of the muses, which derives Agamemnon's scepter to him by descent, joined with gift from Jupiter, Achilles's armour from Vulcan's bounty, Helen's Nephthe from the Egyptian Polydamna, and such like, honouring the possessor with the giver's judgment, as much as with the gift possessed.

§. To whom the goodly bay of Milford should be given.

At Milford haven, arrived Henry earl of Richmond, aided with some forces and sums of money by the French Charles VIII. but so entertained and strengthened by divers of his friends, groaning under the tyrannical yoke of Rich. III. that, beyond expectation, at Bosworth in Leicester, the day and crown was soon his. Every chronicle tells you more largely.

§. And how Llewelin's line in him should doubly thrive.

Turn to the eagle's prophecies in the second song, where the first part of this relation is more manifested. For the rest, thus: About our Confeſſor's time, Macbeth [†] king of Scotland (moved by predictions, affirming that, his line extinct, the posterity of Banghuo, a noble thane of Lothubrie should attain and continue the Scottish reign) and jealous of others hoped for greatness, murdered Banghuo, but missed his design; for, one of the same posterity, Fleance son to Banghuo, privily fled to Griffith ap Llewelin then prince of Wales, and was there kindly received. To him and Neſſa, the prince's daughter, was issue one Walter. He (afterward for his worth favourably accepted, and through stout performance honourably requited by

Malcolm III.) was made lord high Stewart of Scotland; out of whose loins Stewart II. was derived: since whom that royal name hath long continued, descending to our mighty sovereign, and in him is joined with the commixed kingly blood of Tudor and Plantagenet. These two were united with the white and red roses, in those auspicious nuptials of Henry VII. and Elizabeth daughter to Edward IV. and from them, through the lady Margaret, their eldest daughter, married to James IV. his majesty's descent and spacious empire observed, easily shews you what the muse here plays withal. The rest alludes to that; Cambria shall be glad, Cornwall shall flourish, and the isle shall be filled with Brute's name, and the name of strangers shall perish; as it is in Merlin's prophecies.

§. That spirit to her unknown this virgin only loved.

So is the vulgar tradition of Merlin's conception. Untimely it were, if I should slip into discourse of spirits faculties in this kind. For my own part, unless there be some creatures of such middle nature, as the rabbinick [†] conceit upon the creation supposes, and the same with Hesiod's nymphs, or Paracelsus his non-Adams, I shall not believe that other than true bodies on bodies can generate, except by swiftness of motion in conveying of stolen seed, some unclean spirit might arrogate the improper name of generation. Those which St. Augustine [†] calls *Dusii*, * in Gaul, altogether addicted to such filthiness, fauns, satyrs, and sylvans, have had as much attributed to them. But learn of this from divines upon the *Beni-bael-bim* [†] in holy writ, passages of the fathers upon this point, and the later authors of disquisitions in magick and sorcery, as Bodin, Wier, Martin del Rio, others. For this Merlin (rather Merddin, as you see to the fourth song, his true name being Ambrose) his own answer to Vertigern was, that his father was a Roman [†] consul, (so Nennius informs me) as perhaps it might be, and the fact palliated under name of a spirit; as in that of *Ilia*, supposing, to save her credit, the name of Mars for Romulus his father. But to entangle the polite muse with what is more harsh, yet even therein perhaps not displeasing, I offer you this antique passage of him.

—the messagers to Kermardin come
And thou childern diboze the pate plespe hii toke gone
Tho fede [†] on to another. Merlin wat is the
Tho faderise [†] strue. wv misdonno me
Woz icam of kinges icome and thou hart nought worthy a
telle
Woz thou naderst nebere name fader. thereboze hold the stile.
Woz the messagers hurde this hii adunte there.
And este at men about wat the chib were.

* *Ilia*, p. & c. Odyſſ. 2.

[†] Hector Boet. lib. 12. & Buchanan. in reg. 21. & 26 lib. 7. qui eodem aeo citioris Suardos ait didos, quos olim rhanos nuncupabant. Thani vero quæſtores erant regi per interpretationem, ut Boetius. Cerre in chara illa qua jure clientelari te Henrico II. obſtrinxit Willelmus Scottorum rex, legumier inter testes Willelmus de Curcy fenefchallus, Willelmus filius Aldelmi fenefchallus, Aluredus de ſanto Martino fenefchallus, Gilbertus Malet fenefchallus, unde honorarium fuille hoc nomen patet. Horum binī defuncti apud Howedenum, verum ex vetuſtiſſi. anonymo mſ. excerpti.

in Zaccar Hamor. ap. Munſt. ad ii Genef.

Lib. 15. de civ. Dei cap. 23.

* Forſe Duſſi (quod vult Bodinus

lib. 2. cap. 7, daemonum.) qſi ſylvani, aut dryades.

Gen. vi. 2.

† Illuſtres ſæpius viros indigerant hiſtorici noſtri conſules, unde & Aetium adloquuntur Saxones eos, quem tameſi conſulem fuille haud afferent faſti, illuſtri, et. & in republica nobiliſſimum Procopii aliorumque hiſtoriae Gothice produnt. See to the tenth ſong.

† Durbinus dictus Galfrido.

† Sbrew,

new a word applied to the ſtrength ſex, but in Chaucer, Lidgar, and Gower, to the quieter alſo.

Spe seke that he ne had nere sader that me might under-
stone,
And is moder au kings daughter was of thulke lond
And wored at St. Petres in a nonnerie there.

His mother (a nun, daughter to Pubidius king of *Mathraval*, and called *Matilda*, as by a poetical authority only, I find justifiable) and he being brought to the king, she colours it in these words.

—Johanne ich ofte was
In chambr mid mine fellows, there come to me bi cas
A suite baar man mid alle, and bi clupt me wel softe,
And semblance made baire prou, and cuss me wel oft.

and tells on the story which should follow so kind a preface. But enough of this.

S. By th' shoulder of a ram from off the right side pared.

Take this as a taste of their art in old time. Under *Hen. II.* one *William Manguel* a gentleman of those parts, finding by his skill of prediction, that his wife had played false with him, and conceived by his own nephew, formally dresses the shoulder bone of one of his own rams; and sitting at dinner (pretending it to be taken out of his neighbour's flock) requests his wife (equalling him in these divinations) to give her judgment; she curiously observes, and at last with great laughter calls it from her; the gentleman, importuning her reason of so vehement an affection, receives answer of her, that his wife, out of whose flock the ram was taken, had by incestuous copulation with her husband's nephew, fraughted her self with a young one. Lay all together, and judge, gentlewomen, the sequel of this cross accident. But why she could not as well divine of whose flock it was, as the other secer, when I have more skill in osteomancy, I will tell you. Nor was their report less in knowing things to come, than past; so that jealous *Panurge* in his doubt *de la coquage, of cuckoldry*, might here have had other manner of resolution than *Rondibilis, Hippotbade, Bridoye, Trovillogan*, or the oracle itself, were able to give him. Blame me not in that, to explain my author, I insert this example.

S. To crown the goodly road, where built that falcon stout.

In the rocks of this maritime coast of *Pembroke*, are aeries of excellent falcons. *Hen. II.* here passing into *Ireland*, cast off a *Norway* goshawk at one of these; but the goshawk taken at the source by the falcon, soon fell down at the king's foot; which performance in this ramage, made him yearly afterward send hither for eyefalls, as *Girald* is author. Whether these here are the haggarts, (which they call peregrins) or falcon-gentles, I am no such falconer to argue; but this I know, that the reason of the name of peregrins is given, for that they come

from remote and unknown places, and therefore hardly fits these; But I also read in no less than imperial² authority, that peregrins never bred in less latitude than beyond the seventh climate, *dia Riphæos*, which permits them this place; and that, of true falcons-gentle an airy is never found but in a more southern and hotter parallel; which (if it be true) excludes the name of gentle from ours, breeding near the ninth *per Rostochium*. And the same authority makes them (against common opinion) both of one kind, differing rather, in local and outward accidents, than in self-nature.

S. Whose birth the antient bards to Cambria long foretold.

Of *St. Dewy* and his bishoprick you have more to the fourth song. He was prognosticated³ above thirty years before his birth; which, with other attributed miracles, (after the fashion of that credulous age) caused him to be almost paralleled in monkish zeal with that holy *John*, which, unborn, sprang at presence of the incarnate author of our redemption. The translation of the archbishoprick, was also⁴ foretold in that of *Merlin*; *Menevia shall put on the pall of Caerleon*; and the preacher of *Ireland* shall wax dumb by an infant growing in the womb. That was performed when *St. Patrick*, at presence of *Malaria* then with child, suddenly lost use of his speech; but recovering it after some time, made prediction of *Dewy's* holiness, joined with greatness, which is so celebrated. Upon my author's credits only believe me.

Illustrations on the sixth song.

AFTER *Pembroke*, in the former song, succeeds here *Cardigan*; both washed by the *Irish* seas. But, for intermixture of rivers, and contiguity of situation, the inlands of *Montgomery, Radnor*, and *Brecknock* are partly infolded.

S. Whose kind, in her decay'd, is to this isle unknown.

That these bevers were in *Trey* frequent antiently, is testified by *Sylvester Girald*⁵ describing the particulars, which the author tells you, both of this, and the falcons; but that here are no bevers now, as good authority of the present⁶ time informs you.

S. Unto thy charming harp thy future honour sung.

Of the bards, their singing, heraldship, and more of that nature, see to the fourth song. *Ireland*⁷ (saith one) *uses the harp and pipe*, which he calls *tympanum*: *Scotland the harp, tympan, and chorus*: *Wales the harp, pipe, and chorus*. Although *tympanum* and *chorus* have other significations, yet, this *Girald* (from whom I vouch it) using these words as received,

¹ Spencer's *Fairy Queen*, lib. 3. cant. 3.

² Th. Mor. epig.

³ lib. 8. cap. 4.

⁴ lib. 8. cap. 4.

⁵ lib. 8. cap. 4.

⁶ lib. 8. cap. 4.

⁷ lib. 8. cap. 4.

¹ Albert. de animal. 23. cap. 2.

² Girald. itin. 1. cap. 11.

³ Frederic. II. lib. 2. de arcumand. cap. 4.

⁴ Alan. de insul. 1. ad proph. Merlin.

⁵ Poul. & Camden.

⁶ Girald. topograph. 3. dist. cap. 11.

⁷ Quæ te dementia cepit? Quæcere sollicitæ quod reperire times.

⁸ Monument.

⁹ Topograph.

¹⁰ Topograph.

¹¹ Topograph.

¹² Topograph.

I imagine

I imagine, of St. *Jerom's* epistle to *Dardanus*, according to whom, for explanation, finding them pictured in *Ottomar Luscinus* his *mus-fury*, as several kinds of pipes, the first dividing it self into two at the end, the other spread in the middle, as two segments of a circle, but one at both ends, I guess them intended near the same. But I refer my self to those that are more acquainted with these kind of *British* fashions. For the *harp* his word is *cithara*, which (if it be the same with *hira*, as some think, although urging reason and authority are to the contrary) among the bards musick, like that expressed in the ¹ lyric.

— bibam

*Sonante mistum tibiis carmen hira,
Hac Dorium, illis Barbarum.*

Apply it to the former notes, and observe with them, that ² the *Pythagoreans* used, with musick of the harp, (which in those times, if it were *Apollo's*, was certainly but of ³ seven strings) when they went to sleep, to charm (as the old *Scots* were wont to do, and do yet in their isles, as *Buchanan* ⁴ affirms) and compose their troubled affections. Which I cite to this purpose, that in comparing it with the *British* musick, and the attributes thereof before remembered out of *Heracleotes* and *Girald*, you may see convenience of use in both, and worth of antiquity in ours; and as well in pipes as harp, if you remember the poetick story of *Marfias*. And withal forget not that in one of the oldest coins that have been made in this kingdom, the picture of the reverse is *Apollo* having his hair incircled with *Cunobelin's* name, then chief king of the *Britons*; and for *Belin* and *Apollo*, see to the eighth song.

S. By whom first Gaul was taught her knowledge.

Understand the knowledge of those great philosophers, priests, and lawyers, called *Druids*, of whom to the tenth song largely. Their discipline was first found out in this isle, and afterward transferred into *Gaul*; whence their youth were sent hither as to an university for instruction in their learned professions: ⁵ *Caesar* himself is author of as much. Although in particular law-learning, it might seem that *Britain* was required, if the satirist ⁶ deceive not in that;

Gallia caudidos docuit sacunda Britannos.

Eloquent Gaul taught the British lawyers.

Which with excellent *Lipsius*, ⁷ I rather apply to the dispersion of the *Latin* tongue through *Gaul* into this province, than to any other language or matter. For also in *Agricola's* time, somewhat before, it appears that matter of good

literature was here in a far higher degree than there, as *Tacitus* in his life hath recorded. Thus hath our isle been as mistress to *Gaul* twice. First in this *Druidian* doctrine, next in the institution of their now famous university of *Paris*, which was done by *Charlemagne*, through aid and industry of our learned *Alcuin* (he is called also *Albin*, and was first sent ambassador to the emperor by *Offa* king of *Mercia*) seconded by those *Scots*, ⁸ *John Mailros*, *Claudius Clement*, and *Raban Maurus*. But I know great men permit it not; nor can I see any very antient authority for it, but infinite of later times; so that it goes as a received opinion; therefore without more examination in this no more fit passage, I commit it to my reader.

S. One bard but coming in their murderous swords hath slain.

Such strange assertion find I in story of these bards powerful enchantments, that with the amazing sweetness of their delicious ⁹ harmonies, not their own only, but withal their enemies armies have suddenly desisted from fierce encounters; so, as my author says, *did Mars reverence the muses*. This exactly continues all fitness with what is before affirmed of that kind of musick; betwixt which (and all other by authentick affirmation) and the mind's affections there are certain ¹⁰ *μιμήματα*, imitations, as in this particular example is apparent. But how agreeeth this with that in *Tacitus*, which calls a musical incentive to war among the *Germani*, *barditus*? Great critics would there ¹¹ read *barrbitus*, which in *Vegetius* and *Amian* especially, is a peculiar name for those stirring-up alarms before the battle used in *Roman* assaults, equal in proportion to the *Greeks* *αλαλαγμοί*, the *Irish* kens *pharroh*, and that *Roland's* song of the *Normans*, which hath had his like also, in most nations. But, seeing *barrbitus*, (in this sense) is a word of later time, and scarce yet, without remembrance of his naturalization, allowed in the *Latin*; and, that this use was notable in those *Northens* and *Gauls*, ¹² until wars with whom, it seems *Rome* had not a proper word for it (which appears by *Festus Pompeius*, affirming that the cry of the army was called *barbaricum*) I should think somewhat confidently that *barditus* (as the common copies are) is the truest ¹³ reading; yet so, that *barrbitus*, formed by an unknowing pronunciation is, and, by original, was the self same. For, that *Lipsius* mending the place, will have it from *baten* in *Dutch*, which signifies, to cry out, or from *bar bar*, (which is as *baron* in the *Norman* customs and elsewhere) or from the word *barre*, for imitation of that beast's cry, I much wonder, seeing *Tacitus* makes express mention

¹ Horat. epod. 9.

² Plutarch. de Isid. & Osiride.

³ Horat. carm. 3. od. 11. Homer. in hymn. ad Elys. Serv. Honorat. ad A. Eneid. ubi resudinem primo trium chordarum, quam a Mercurio caducei pretio emisse Apollinem septemque discrimina vocum addidisse legimus, & videndum Diodot. Sicul. lib. 4.) unde *ἰστέλλω*, *ἰστέλλω*, &c. dicitur Graecis.

⁴ Scot. 4. in Fethelmach.

⁵ Comment. 6.

⁶ Juvenal. Satir. 15.

⁷ De pronuntiat. rect. Lat. ling. cap. 3. v. Virgilium ad infit. Justin. tit. quib. non est permitt. fac. test.

⁸ Aristot. Polit. 8. cap. 6.

⁹ Fabulof. amiq. lib. 6.

¹⁰ Germ.

¹¹ Bardus Gallicae & Britannicae cantus. Fest. & vide Bodin. meth. hist. cap. 9. qui *Roburum Dagobartum* & similia vocabula hinc (male vero) deducit.

¹² Horat. carm. 3. od. 11. Homer. in hymn. ad Elys. Serv.

¹³ Lips. ad Polyb. 4. dialog. 11.

¹⁴ Locum Taciti in de morib.

¹⁵ Diodot. Sicul. de gest.

of verses harmonically celebrating valiant performers, recital whereof hath that name *barditus*, which, to interpret, we might call *singing*. But to conjoin this fiery office with that quenching power of the bards, spoken of by the author, I imagine, that they had also for this martial purpose skill in that kind of musick, which they call *Phrygian*, being (as Aristotle says) *οργιαστικὴ καθ' ἑσθ' ἰσθονατική*, i. e. as it were, *madding the mind with sprightly motion*. For so we see that those which sing the tempering and mollifying *paean* to *Apollo*, the *θηρὰ καὶ χαλάρη*, after victory, did among the *Greeks* in another strain move with their *paean* to *Mars*, their *ἄβλα*, and provoking charms before the encounter; and so meets this in our bards dispersed doubtless (as the *Druids*) through *Britain*, *Gaul*, and part of *Germany*, which three had especially in warfare much community.

§. Our Cimbri with the Gauls.—

National transigrations touched to the fourth song give light hither. The name of *Cimbri* (which most of the learned in this latter time have made the fame with *Cimmerians*, *Cumerians*, *Cambrians*, all coming from *Gomer* ² *Japhet's* son, to whom with his posterity, was this north-western part of the world divided) expressing the *Welsh*, calling themselves also *Kumrp*. The author alludes here to that *British* army, which in our story is conducted under *Brennus* and *Belinus* (sons to *Molmutius*) through *Gaul*, and thence prosecuted, what in the eighth song and my notes there more plainly.

§. Where, with our brazen swords—

The author thus teaches you to know, that, among the antients, brass, not iron, was the metal of most use. In their little scythes, wherewith they cut their herbs for enchantments, their priests' razors, plow shares, for describing the content of plotted cities, their musick instruments, and such like, how special this metal was, it is with good warrant delivered; Nor with less, how frequent in the making of swords, spears, and armour in the heroic times, as among other authorities, that in the encounter of *Diomedes* and *Hector* ² manifesteth:

— πλάγῃ δ' ἄν' ἄν' χαλκῶν χαλκῶν.
— brass rebounds from brass.

Which seems in them to have proceeded from a willingness of avoiding instruments too deadly in wounding; for from a styptic faculty in this, more than in iron, the cure of what it hurts is affirmed more easy, and the metal itself, *φάρμακον*, of remedial power, as ² *Aristotle* expresses it. But that our *Britons* used it also,

it hath been out of old monuments by our most learned antiquary observed.

§. That to the Roman trust on his report that slay.

For indeed many are, which the author here impugns, that dare believe nothing of our story, or antiquities of more ancient times, but only *Julius Caesar*, and other about or since him. And surely his ignorance of this isle was great, time forbidding him language or conversation with the *British*. Nor was any before him of his country, that knew or meddled in relation of us. The first of them that once to letters committed any word deduced from *Britain's*, name was a philosophical poet (flourishing some fifty years before *Caesar*) in these verses:

*Nam quid Britannum coelum differre putamus,
Et quod in Aegypto est, qua mundi claudicat
(axis?)*

In the somewhat later poets that lived about *Augustus*, as *Catullus*, *Virgil*, and *Horace*, some passages of the name have you, but nothing that discovers any monument of this island proper to her inhabitants. I would not reckon *Cornelius Nepos* among them, to whose name is attributed, in print, that polite poem (in whose composition *Apollo* seems to have given personal aid) of the *Trojan* war, according to *Dares* the *Phrygian's* story; where, by poetical liberty the *Britons* are supposed to have been with *Hercules* at the rape of *Hesione*: I should so, besides error, wrong my country, to whose glory the true author's name of that book will, among the worthies of the muses, ever live. Read but these of his verses, and then judge if he were a *Roman*:

— sine remigis usu
*Non nosset Memphis Romam, non Indus Hiberum,
Non Scythia Cecropidem, non nostra Britannia
(Gallum.*

And in the same book to *Baldwin* archbishop of *Canterbury*.

*At tu dissimulis longe cui fronte serena
Sanguinis egregii lucrum, pacemque litata
Emptam anima pater illepius, summumq; cacu-
In curam venisse velit, cui cederet ipse (men
Prorsus, vel proprias laetus sociaret habenas.*

Of him a little before.

— quo praeside floret
* *Cantia, & in prisca respicit libera leges.*

Briefly thus: the author was *Joseph* of *Exeter*, (afterwards archbishop of *Bourdeaux*) famous in this and other kind of good learning, under *Hen. II.* and *Rich. I.* speaking among those verses in this form:

² Suid in *uaser*. ² Genes. x. ² Sophocles, Carminius, Virgil, ap. Macrobius Saturnal. lib. 4. cap. 19. Tausan, in Iaconic, γ. & Arcadic. a. ² Sam. xvii. ² Iliad. a. ² Problem a. § 22. ² Camd. in Cornub. ² Lucres. de rer. nat. 6. ² Ita. n. legendum, non Tania aut Pontia, uui ineipiunt, qui Josepho nostro merenti suam inviderunt coronam, in codice typis excusa.

*Te sacrae affument acies divinaque bella.
Tunc dignum majore tuba, tunc pectore toto
Mitare, & immenſum necum ſpargere per orbem.*

Which muſt (as I think) be intended of *Baldwin*, whoſe undertaking of the croſs and voyage with *Cœur de Lion* into the holy land, and death there, is in our ſtories; Out of which you may have large declaration of this holy father (ſo he calls *Thomas Becket*) that bought peace with price of his life; being murdered in his houſe at *Canterbury*, through the urging grievances intolerable to the king and laity, his diminution of common law liberties, and endeavoured derogation for maintenance of *Romiſh* uſurped ſupremacy. For theſe liberties, ſee *Matthew Paris* before all other, and the epiſtles of *John of Salisbury*, but lately publiſhed; and, if you pleaſe, my *Janus Anglorum*, where they are reſtored from ſenſeleſs corruption, and are indeed more themſelves than in any other whatſoever in print. But theſe too much of this falſe *Cornelius*. Compare with theſe notes what is to the firſt ſong of *Britain* and *Albion*; and you ſhall ſee that in *Greek* writers mention of our land is long before any in the *Latin*: for *Polybius*, that is the firſt that mentions it, was more than c. years before *Lucretius*. The author's plainneſs, in the reſt of *Wye's* ſong to this purpoſe, diſcharges my further labour.

§. *Comes Dulas, of whoſe name ſo many rivers be.*

As in *England* the names of *Avon*, *Ouſe*, *Stoure*, and ſome others; ſo in *Wales*, before all, is *Dulas*, a name very often of rivers in *Radnor*, *Brecknock*, *Caermarthen*, and elſewhere.

§. *Which ſome have held to be begotten of the wind.*

In thoſe weſtern parts of *Spain*, *Gallicia*, *Portugal*, and *Aſturia*, many claſſick teſtimonies, both poets, as *Virgil*, *Silius Italicus*, naturaliſts, hiſtorians, and geonicks, as *Varro*, *Columel*, *Pliny*, *Trogus*, and *Solinus*, have remembered theſe mares, which conceive through fervent luſt of nature, by the weſt wind, without copulation with the male (in ſuch fort as the *ova ſubventanea*⁴ are bred in hens) but ſo that the foals live not over ſome three years. I refer it as an allegory⁵ to the expreſſing only of their fertile breed and ſwiftness in courſe; which is elegantly to this purpoſe, framed by him that was the father⁶ of this conceit to his admiring poſterity, in theſe ſpeaking of *Xanthus* and *Balius*, two of *Achilles's* horſes:

— τῷ ἀμα ποταμὸν περὶ ὅλῳ
Τὴν ἔρεα Ζεφύρου ἀνέμῳ ἄρματα Πόδας;
Ποταμὸν δὲ μὴν παρὰ τοῦ Ὀκεανῶ.

*Theſe did fly like the wind, which ſwift
Podarge foaled to their fire Zephyrus, feed-
ing in a meadow by the ocean.* Whence
withal you may note, that *Homer* had
at leaſt heard of theſe coaſts of *Spain*, ac-
cording as upon the conjectures on the name of
Lisbon, the *Elyſians*, and other ſuch you have
in *Strabo*. But for *Lisbon*, which many will
have from *Ulyſſes*, and call it *Ulixbon*, being
commonly written *Olifippo*, or *Uliſippo*, in the
antients, you ſhall have better etymology, if
you hence derive and make it * *ἄλβος ἵππων*, as it
were, that the whole tract is a ſeminary of hor-
ſes, as a moſt learned man hath delivered.

Illustrations on the ſeventh ſong.

THE muſe yet hovers over *Wales*, and
here ſings the inner territories, with
part of the *Severn* ſtory, and her *Engliſh* neigh-
bours.

§. *That fraught from plenteous Powle with
their ſuperfluous waſt
Manure the baſeful March*————

Wales (as is before touched) divided into
three parts, north *Wales*, ſouth *Wales*, and
Powſe; this laſt is here meant, comprizing
part of *Brecknock*, *Radnor*, and *Montgomery*.
The diviſion hath its beginning attributed to
the three ſons of *Roderick* the great, *Mervin*,
Cadelb, and *Anarawt*, who poſſeſſed them for
their portions hereditary, as they are named.
But out of an old book of *Welſh* laws, *David
Powel* affirms theſe tripartite titles more antient.
I know that the diviſion and gift is different in
Caradoc Lhancarvan, from that of *Girald*; but
no great conſequence of admitting either here.
Thoſe three princes were called in *Britiſh*
ἑτρίτωπος ταιαχθῖος, the three crowned prin-
ces, becauſe⁷ every of them wore upon his
bonet, or helmet, a coronet of gold, be-
ing a broad lace, or headband, indented up-
ward, ſet and wrought with precious ſtones,
which in *Britiſh*, or *Welſh*, is called *taiaeth*,
which name, nurſes give to the upper band on a
child's head. Of this form (I mean of a band
or wreath) were the antienteſt of crowns, as ap-
pears in the deſcription of the *cidaris*, and
tiaara of the *Persians*, in *Cteſias*, *2. Curtius*,
and *Xenophon*, the crowns of oak, graſs, parſley,
olives, myrtle, and ſuch among the *Greeks* and
Romans, and in that expreſs name of *diadema*,
ſignifying a band, of which, whether it have in
our tongue community with that *banda*, de-
rived out of the *m Carian* into *Italian*, expreſſing

⁴ *Chronica adde & Girald. itin. Camb. 2. cap. 14.*
breed without a cock. ⁵ *Juſtin. hiſt. lib. 44.* ⁶ *Iliad. 7.*

leſſion. Paul. Merul. conſon. part 2. lib. 2. cap. 16.
ad *Caradoc. Lhancarvan.* ⁷ *Stephan. 7261. 7262. A. d. 1271. v. Gorop. Becceſelan. 2. & Pet. Pithaei adſcribat. 2. cap. 20. de banda, c. 2*
ad andatem apud Dionem conferat, & videſis ſi in altero alterius reliquiae.

⁷ *Saraburiens. epit. 119. 210. 220. & 261.*

⁸ *Geograph. 2.* ⁹ *Quaſi ſeruo* *Prolemaeo. loca ſubſtato vera reſtat*

¹⁰ *Girald. Camb. deſcript. cap. 2. ſec. 1337.*

¹¹ *D. Foel.*

victory, and so, for ominous good words, is translated to ensigns and standards (as in oriental stories, the words *Barda* and *Bardol*, often shew) I must not here inquire. *Molmutius* first^a used a golden crown among the *British*, and, as it seems by the same authority, *Atbellan* among the *Saxons*. But I digress. By the *March* understand those limits between *England* and *Wales*; which continuing from north to south, join the *Welsh* shires to *Hereford*, *Shropshire*, and the *English* part, and were divers baronies, divided from any shire, until^b *Hen. VIII.* by act of parliament, annexed some to *Wales*, other to *England*. The barons that lived in them, were called lords marchers, and by the name of *marcbiones*, i. e. *marqueses*. For so *Roger of Mortimer*, *James of Audeleg*, *Roger of Clifford*, *Roger of Leiburn*, *Haimo L'efrange*, *Hugh of Turbervil* (which by sword adventured the ransom of *Hen. III.* out of *Simon of Montfort* his treacherous imprisonment, after the battel of *Lewes*) are called *marcbiones Walliae*; i. e. *marqueses*, or lords marchers of *Wales*; and *Edward III.* created *Roger of Mortimer*, earl of *March*, as if you should say, of the limits betwixt *Wales* and *England*. See to the next song. *Barre*, or *mett*, signifying a bound or limit; as to the third song more largely. And hence is supposed the original of that honorary title of *marques*, which is as much as a lord of the frontiers, or such like; although I know divers other are the derivations which the few distils have imagined. These marchers had their laws in their baronies, and for matter of suit, if it had been betwixt tenants holding of them, then was it commenced in their own courts and determined; if for the barony itself, then in the king's court at *Westminster*, by writ directed to the sheriff of the next *English* shire adjoining, as *Glocester*, *Hereford*, and some other. For the king's writ (but see to the ninth song more particularly) did not run in *Wales* as in *England*, until by statute the principality was incorporated with the crown; as appears in an old^c report where one was committed for cloigning a ward into *Wales*, *extra potestatem regis*, under *Hen. III.* Afterward^d *Ed. I.* made some shires in it, and altered the customs, conforming them in some sort to the *English*, as in the statute of *Rutbun* you have it largely; and under *Ed. II.* to a^e parliament at *York*, were summoned twenty four out of north *Wales*, and as many out of south *Wales*. But notwithstanding all this, the marches continued as distinct; and in them were, for the most part, those controverted titles, which in our law annals, are referred to *Wales*. For the divided shires were, as it seems, or should have been, subject to the *English* form; but the particulars hereof are unfit for this room; if you are

at all conversant in our law, I send you to my^f margin; if not, it scarce concerns you.

§.—the *Higre* wildy raves.

This violence of the waters madness, declared by the author, is so expressed in an old^g monk, which about cccc. years since, says it was called the *Higre* in *English*. To make more description of it, were but to resolve the author's poem.

§. Within her hollow woods the satyrs that did won.

By the satyrs ravishing the sea nymphs into this maritime forest of *Dean*, (lying between *Wye* and *Severn* in *Glocester*) with *Severn's* suit to *Neptune*, and his provision of remedy, you have, poetically described, the rapines which were committed along that shore, by such as lurked in these shady receptacles, which he properly stiles *satyrs* that name coming from an eastern root and signifying to *bide*, or *lie hid*, as that^h all knowing *Isaac Casaubon* hath at large (among other his unmeasurable benefits to the state of learning) taught us. The *English* were also ill intreated by the *Welsh* in their passages here, until by act of parliament remedy was given; as you may see in theⁱ statute's preamble, which satisfies the fiction.

§. Whilst Malvern, king of bills, fair Severn overlooks.

Hereford and *Worcester* are by these hills seven miles in length confined; and rather, in respect of the adjacent vales, than the hills self, understand the attribute of excellency. Upon these is the supposed vision of *Piers Plowman*, done, as is thought, by *Robert Langland*, a *Shropshire* man, in a kind of *English* metre; which for discovery of the infolding corruptions of those times, I prefer before many more seemingly serious invectives, as well for invention as judgment. But I have read that the author's name was *John Malverne*, a fellow of *Oriel* college in *Oxford*, who finished it in 16 *Ed. III.*

§. As there the Apulian fleece, or dainty Tarentine.

In *Apulia* and the upper *Calabria* of *Italy*, the wool hath been ever famous for^j its excellence; in so much that for preserving it from the injury of earth, bushes, and weather, the shepherds used to cloath their sheep with skins; and indeed was so chargeable in these and other kind of pains about it, that it scarce required cost.

§. —himself in two did rive.

Alluding to a prodigious division of *Marclay* hill, in an earthquake of late^k time; which most of all was in these parts of the island.

^a Galfred. Monumeth. lib. 1. & 9.

^b Marth. Wilmot. lib. 1.

^c Gard. 147.

^d 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^e 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^f 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^g 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^h 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

ⁱ 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^j 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^k 11 *Ed. III.* jurisdic. 13. 6 *Hen. V.* lib. 14.

^a 27 *Hen. VIII.* cap. 26. v. 28 *Ed. III.* cap. 2.

^b Ad contr. feud. 2. tit. quis dicatur dux & juriconsultus faepius.

^c 14 *Ed. II.* dorf. clauf. mem. 13.

^d 14 *Ed. II.* dorf. clauf. mem. 13.

^e 14 *Ed. II.* dorf. clauf. mem. 13.

^f 14 *Ed. II.* dorf. clauf. mem. 13.

^g 14 *Ed. II.* dorf. clauf. mem. 13.

^h 14 *Ed. II.* dorf. clauf. mem. 13.

ⁱ 14 *Ed. II.* dorf. clauf. mem. 13.

^j 14 *Ed. II.* dorf. clauf. mem. 13.

^k 14 *Ed. II.* dorf. clauf. mem. 13.

^g Lib. rub. faecar.

^h 11 *Hen. III.* vi.

ⁱ V. 18 *Ed. II.* tit. aff. 132.

^j Guil. Malmesbur. lib. 4. de

^k doctissimus a doctissimo Dan.

^l Var. de re rustica. c. cap. 2.

^m Var. de re rustica. c. cap. 2.

ⁿ Var. de re rustica. c. cap. 2.

^o Var. de re rustica. c. cap. 2.

^p Var. de re rustica. c. cap. 2.

^q Var. de re rustica. c. cap. 2.

^r Var. de re rustica. c. cap. 2.

^s Var. de re rustica. c. cap. 2.

^t Var. de re rustica. c. cap. 2.

^u Var. de re rustica. c. cap. 2.

^v Var. de re rustica. c. cap. 2.

^w Var. de re rustica. c. cap. 2.

^x Var. de re rustica. c. cap. 2.

^y Var. de re rustica. c. cap. 2.

^z Var. de re rustica. c. cap. 2.

Illustrations on the eighth song.

Still are you in the *Welsh* march, and the chorography of this song includes itself, for the most, within *Shropshire's* part over *Severn*.

§. That all without the mound that Mercian Offa cast?

Of the marches in general, you have to the next before. The particular bounds have been certain parts of *Dee*, *Wye*, *Severn*, and *Offa's* dike. The antientest is *Severn*, but a later is observed in a right line from * *Strigoll* castle upon *Wye*, to *Chester* upon *Dee*, which was so naturally a meer between these two countries, *Wales* and *England*, that by apparent change of its channel towards either side, superstitious judgment was used to be given of success in the following year's battels of both nations; whence perhaps came it to be called *boly Dee*, as the author also often uses. Betwixt the mouths of *Dee* and *Wye* in this line (almost c. miles long) was that *Offa's* dike cast, after such time as he had besides his before possessed *Mercland*, acquired by conquest even almost what is now *England*. King *Harold* † made a law, that whatsoever *Welsh* transcended this dike with any kind of weapon, should have, upon apprehension, his right hand cut off. *Athelstan* after conquest of *Howel Dha* king of *Wales*, made *Wye* limit of north *Wales*, as in regard of his chief territory of west *Saxony*. So affirms *Malmesbury*. Which well understood, impugns the opinion received for *Wye's* being a general meer instituted by him, and withal, shews you how to mend the monks published text, where you read ** *Ludwallum regem omnium Wallensium, & Constantinum regem Scotorum cedere regnis compulsi*; he compelled *Ludwall* king of all *Wales*, and *Constantine* king of *Scots*, to leave their crowns. For plainly this *Ludwall* (by whom he means *Howel Dha* in other chronicles called *Huwal*) in *Athelstan's* life time was not king of all *Wales*, but only of the south and western parts, with *Powis*, his cousin *Edwall Voel* then having north *Wales*; betwixt which, and the part of *Howel* conquered, this limit was proper to distinguish. Therefore either read *occidentalium Wallensium*, west *Wales*, (for in *Florence of Worcester*, and *Roger of Hoveden*, that passage is with *occidentalium Britonum*, west *Britons*) or else believe that *Malmesbury* mistook *Howel* to be in *Athelstan's* time, as he was after his death, sole prince of all *Wales*. In this conjecture, I had aid from *Lhancarvan's* history, which in the same page (as learned *Lhuid's* edition in *English* is) says, that *Athelstan* made the river *Cambia* † the frontier towards *Cornwal*; but

there, in requital, I correct him, and read *Tambara*, i. e. *Tamar*, dividing *Devonshire* and *Cornwal*; as *Malmesbury* hath it expressly, and the matter self enough perfwades.

§. Who drove the giants hence, that of the earth were bred.

Somewhat of the giants to the first song; fabulously supposed begotten by spirits upon *Dioctesian's* or *Danaus's* daughters. But here the author aptly terms them, *bred of the earth*, both for that the antiquities of the *Gentiles* made the first inhabitants of most countries as produced out of the soil, calling them *aborigines* and *autochthonas*, as also for imitation of those epithets of *γῆνις* and *πυρρῶνα* among the *Greeks*, *terrae filii* among the *Latins*, the very name of giants being thence ^b derived.

Οἵ τε γὰρ ἐκ τῆς γῆς ἀμαλῆθ' ἐγενάνθησαν.

Because they were bred of earth, and the dew of heaven;

Which misconceit I shall think abused the heathen upon their ill understanding of *Adam's* creation * and allegorick greatness, touched before out of *Jewish* fiction.

§. Her Albanact for aid, and to the Scythian cleave.

Britain's tripartite division by *Brute's* three sons, *Logrin*, *Camber*, and *Albanact*, whence all beyond *Severn* was stiled *Cambria*, the now *England* *Loegria*, and *Scotland* *Albania*, is here shewed you; which I admit, but as the rest of that nature, upon credit of our suspected stories followed with sufficient justification by the muse; alluding here to that opinion which deduces the *Scots* and their name from the *Scythians*. Arguments of this likelihood have you largely in our most excellent antiquary. I only add, that by tradition of the *Scythians* themselves, they had very antiently a general name, titling them ⁱ *Scolots* (soon contracted into *Scots*) whereas the *Grecians* called the northern all ^k *Scythians*, perhaps the original of that name being from shooting; for which they were especially through the world famous, as you may see in most passages of their name in old poets; and that *Lucian's* title of *Toxaris*, is, as if you should say, an archer. For, the word *shoot* being at first of the *Teutonic* (which was very likely dispersed largely in the northern parts) antiently was written nearer *scyth*, as among other testimonies, the name of ^l *scyth* ringen i. e. the shooting finger, for the fore-finger among our ^m *Saxons*.

§. Three hundred years before Rome's great foundation laid.

Take this with latitude; for between *Aeneas Sylvius*, king of the *Latins*, under whose time *Brute* is placed, to *Numitor*, in whose second year *Rome* was built, intercedes above cccxli.

* Caradoc Lhancarvan in Conan Tindasthwy. Girald. itinerar. 3. cap. 11. & descript. cap. 15.

† Higden. in polychronic. 1. cap. 43.

‡ Cambalan or Camel.

§ Callimach. in hymn. Jovis.

¶ Herodot. Melpomene 2.

‡ Ephor. ap. Strab. 4. See to the fourth song.

leg. esp. 40.

* By Chetford in Mea nout.

** Malmesburien lib. 2. cap. 6.

† In 707 scyth forsan reliquie

‡ Alured.

and with such difference understand the thousand until *Caesar*.

§. And long before born arms against the barbarous Hun.

Our stories tell you of *Humber* king of *Huns* (a people that being *Scythian*, lived about those parts which you now call *mar delle Zabach*) his attempt and victory against *Albanact*, conflict with *Logrin*, and death in this river, from whence they will the name. Distance of his country, and the unlikely relation, weakens my historical faith. Observe you also the first transmigration of the *Huns*, mentioned by *Procopius*, *Agathias*, others, and you will think this very different from truth. And well could I think by conjecture (with a great antiquary) that the name was first (or thence derived) *Habzen* or *Aber*, which in *British*, as appears by the names *Abergevenni*, *Aberteuwy*, *Aberhodni*, signifying the fall of the river *gevenni*, *Tewi*, *Rhodni*, is as much as a river's mouth in *English*, and fits itself specially, in that most of the *Yorkshire* rivers here cast themselves into one confluence for the ocean. Thus perhaps was *Severn* first *Hafren*, and not from the maid there drowned, as you have before; but for that, this no place.

§. To Stamford in this isle seem'd Athens to transfer.

Look to the third song for more of *Bladud* and his baths. Some testimony is, that he went to *Athens*, brought thence with him four philosophers, and instituted by them an university at *Stamford* in *Lincolnshire*: But, of any persuading credit I find none. Only of later time, that profession of learning was there, authority is frequent. For when through discording parts among the scholars, (reigning *Ed. III.*) a division in *Oxford* was into the northern and southern faction, the northern (before under *Hen. III.* also was the like to *Northampton*) made secession to this *Stamford*, and there professed, until upon humble suit by *Robert of Stratford*, chancellor of *Oxford*, the king, by edict, and his own preference, prohibited them; whence, afterward, also was that oath taken by *Oxford* graduates, that they should not profess at *Stamford*. *White of Basingstoke* otherwise guesses at the cause of this difference, making it the *Pelagian* heresy, and of more ancient time, but erroneously. Unto this, refer that supposed prophecy of *Merlin*:

*Doctrinae studium quod nunc viget ad vada boum,
Ante finem seculi celebrabitur ad faxi.*

Which you shall have *Englished* in that solemn

nized marriage of *Thames* and *Medway*, by a most admired muse of our nation, thus with advantage.

*And after him the fatal Welland went,
That, if old sawes prove true (which God forbid)
Shall drown all* Holland with his excrement.
And shall see Stamford, though now homely bid,
Then shine in learning more than ever did
Cambridge or Oxford, England's goodly beams.*

Nor can you apply this, but to much younger time than *Bladud's* reign.

§. — As be those four proud streets began.

Of them you shall have better declaration to the sixteenth song.

§. There ballancing his sword against her baser gold.

In that story, of *Brennus* and his *Gauls* taking *Rome*, is affirmed, that by senatorial authority *P. Sulpitius* (as a tribune) was committed to transact with the enemy for leaving the *Roman* territory; the price was agreed 10 pound of gold; unjust weights were offered by the *Gauls*, which *Sulpitius* disliking, so far were those insolent conquerors from mitigation of their oppressing purpose, that (as for them all) *Brennus* to the first injustice of the balance, added the poize of his sword also, whence upon a murmuring complaint among the *Romans*, crying *vae victis, vae to the conquered*, came that to be as a proverb applied to the conquered.

§. Against the Delphian power yet shak'd his ireful sword.

Like liberty as others, takes the author in affirming that *Brennus*, which was general to the *Gauls* in taking *Rome*, to be the same which overcame *Greece*, and assaulted the oracle. But the truth of the story stands thus. *Rome* was afflicted by one *Brennus* about the year 300. L. after the building, when the *Gauls* had such a *Cadmeian* victory of it, that fortune converted by martial opportunity, they were at last by *Camillus* so put to the sword, that a reporter of the slaughter was not left, as *Livy* and *Plutarch* (not impugned by *Polybius*, as *Polydore* hath mistaken) tell us. About 100 years after, were tripartite excursions of the *Gauls*, of an army under *Cerethrius* into *Thrace*; of the like under *Belgus* or *Boisius* into *Macedon* and *Illyricum*; of another under one *Brennus* and *Acichorius* into *Pannonia*. What success *Belgus* had with *Ptolemy*, furnished

* *Agathias* lib. 1.

* *Gerald. Itinerar.* cap. 2. & 4.

* *Twin*, lib. 1. apolog. *Oxon.* 5. 115. & seqq.

* *flanz.* 11.

* *V. vero Stephan.* *Forcettulum*, lib. 5. de *Gall.* philosophi qui haec inter examinandum foeda, ast cum aliis, in historia ipsa lapsus est.

* *Halicarnass.* hist. 4. lib. 5.

* *Leland*, ad cyg. *Can.* in *Hull*.

* *Merlin*, apud *Hard.* cap. 25. ex istem & *Balsam.*

* *Queen-ford.*

* *Stane-ford.*

* *V. Io. Prol.* defens. *Brit.* qui nimium hic errore involuunt.

* *Alus dictum* isthoc aestuarium *Ptolemaeo*.

* *Io Cai.* antiq. *Can.* 2. lib.

* *Spenc.* *Fairy Queen*, lib. 4. cant. 11.

* *Liv.* dec. lib. 5. *Plutarch.* in *Camillo*.

* *Alus dictum* isthoc aestuarium *Ptolemaeo*.

alegion, thunderbolt, is discovered in the same^a authors which relate to us *Brennus* his waiving of Greece, with his violent, but somewhat voluntary, death. But part of this army, either divided by mutiny; or left, after *Apollo's* revenge, betook them to habitation in *Thrace*, about the now *Constantinople*; where first, under their king *Comontorius* (as *Polybius*, but *Livy* saith under *Lutatus* and *Comnorus*, which name perhaps you might correct by *Polybius*) they ruled their neighbouring states with imposition of tribute, and, at last, growing too populous, sent (as it seems) those colonies into *Asia*, which in *Gallio*gracia left sufficient steps of their ancient names. My compared classick^b authors will justify as much; nor scarce find I material opposition among them in any particulars; only *Trogus*, epitomized by *Justin*, is therein, by confusion of time and actions, somewhat abused; which hath caused that error of those which take historical liberty (poetical is allowable) to affirm *Brennus* which sacked *Rome*, and him that died at *Delfos*, the same. Examination of time makes it apparently false; nor indeed doth the *British* chronology endure our *Brennus* to be either of them, as *Polydore* and *Buchanan* have observed. But want of the *British* name moves nothing against it; seeing the people of this western part were all, until a good time after those wars, stiled by the name of *Gauls* or *Celts*; and those which would have rank'd the oracle, are said by *Callimachus* to have come

—αἱ ἰωνοὶ βορρᾶν ἔλθουσιν.
—from the utmost west.

Which as well fits us as *Gaul*. And thus much also observe, that those names of *Brennus* and *Belinus*, being of great note, both in signification and personal eminency; and, likely enough, there being many of the same name in *Gaul* and *Britain*, in several ages, such identity made confusion in story. For the first, in this relation appears what variety was of it; as also *brenbin* and *brennin* in the *British* are but significant words for king; and peradventure almost as ordinary a name among these westerns; as *Pharaoh* and *Ptolemy* in *Egypt*, *Agag* among the *Amalekites*, *Asaces*, *Nicomedes*, *Aleuada*, *Sopbi*, *Caesar*, *Oisling*, among the *Parthians*, *Rythinians*, *Thessalians*, *Persians*, *Romans*, and our *Kentish* kings, which the course of history shews you. For the other, you may see it usual in names of their old kings, as *Cassi-Belin* in *Caesar*, *Cuno-Belin* and *Cym-Belin* in *Tacitus*, and *Dio*, and perhaps *Cam-Baules* in *Pausanias*, and *Belin* (whose steps seem to be in *Abellius*, a *Gaulish* and *Bela-tucadre* a *British* God) was the name among them of a worshipped idol, as appears in *Ausonius*; and the same with *Apollo*, which also by

a most ancient *British* coin, stamped with *Apollo* playing on his harp, circumscribed with *Cuno-belin*, is shewed to have been expressly among the *Britons*. Although I know, according to their use, it might be added to *Cuno* (which was the first part of many of their regal names, as you see in *Cuneglas*, *Cyngetorix*, *Congolitan*, and others) to make a significant word, as if you should say, the yellow king, for *Belin* in *British* is yellow. But seeing the very name of their *Apollo* so well fitted with that colour, which to *Apollo* is commonly attributed, (and observe that their names had usually some note of colour in them, by reason of their custom of painting themselves) I suppose they took it as a fortunate concurrence to bear an honoured deity in their title, as we see in the names of *Merodach* and *Evil-Merodach* among the *Babylonian* kings, from *Merodach*^d one of their false Gods; and like examples may be found among the old emperors. Observe also that in *British* genealogies, they ascend always to *Belin* the great (which is supposed *Heli*, father to *Lud* and *Cassibelin*) as you see to the fourth song; and here might you compare that of *Hel*, in the *Punick* tongue, signifying *Phoebus*, and turned into *Belus*; but I will not therewith trouble you. However, by this, I am persuaded (whenever the time were of our *Belinus*) that *Bolgus* in *Pausanias*, and *Bolgus* in *Justin* were mistook for *Belinus*, as perhaps also *Prausus* in *Strabo* (π. supplying^e oftentimes the room of ε.) generated of *Brennus* corrupted. In the story I dare follow none of the modern erroneously transcribing relaters or seeming correctors, but have, as I might, took it from the best self-fountains, and only upon them, for trial, I put myself.

§. — whence *Cymbrica* it took.

That northern promontory now *Jutland*, part of the *Danish* kingdom, is called in geographers *Cymbrica Chersonesus*, from name of the people inhabiting it. And those which will the *Cymbrians*, *Cambrians*, or *Cumrians*, from *Camber*, may, with good reason of consequence, imagine that the name of this *Chersonesus* is thence also, as the author here, by liberty of his muse. But if, with *Goropius*, *Camden*, and other their followers, you come nearer truth, and derive them from *Gomer*, son to *Japhet*, who, with his posterity, had the north-western part of the world; then shall you see, as it were, the accent upon *Chersonesus*, giving the more significant note of the country; the name of *Cymbrians*, *Cimmerians*, *Cambrians*, and *Cumrians*, all as one in substance, being very comprehensive^f in these climates; And perhaps, because this promontory lay out so far, under near 1x degrees latitude (almost at the utmost of *Pto-*

^a Pausanias in Phocia. ^b Strab. lib. 10. ^c Polyb. l. 2. §. 1. & Liv. dec. 1. lib. 4. dec. 4. lib. 8. Strab. A. Pausan. Phocia. 1. Appian. Ill. lib. 14. & 21. Plutarch. Camillo. Caeterum plerique Delphis iniecta a Phoebo grandine precepit, qui tuerant, repositus in Aegyptum, conductus sub stipendiis Ptolemaei Philadelphi mercede in vultu scholasticis Graecis, ad hymn. Callimach. in Delum. ^d Vet. inscript. in Cumbria, & apud Jos. Scalig. ad Aufon. 1. cap. 9. & v. Rhodig. lib. 17, cap. 28. Plura de Belino, sive Belo, i. e. Apolline Gallico Pet. Pithaeus advers. subsec. lib. 1. cap. 3. qui Belenus αραπὴν ἐπέλεξα. Phoebi epitheton autumn. v. notas Camd. ad numismata, & nos ad Cant. 9. ^e Παύσης. ^f Jerem. cap. 1. ^g Cael. Rhodig. antiq. lea. 1. cap. 6. ^h Eustath. ad Dionys. perier. vii. Ἀμερῆς, ἀπὸ τοῦ ἀμερῆς & Νίχου ὁστρακισμοῦ ἀπὸ τοῦ ὁστρακισμοῦ. ⁱ Transmutationem of G. into C. vultus, antiquiss. vultus ad e. vultus, et Lipsius sicut, lib. de pronuntiatio. ling. Latin. cap. 13. ^j Plutarch. in Mario. & Herodot. lib. 4.

emy's geography) and so had the first winter days no longer than between five and six hours, therein somewhat (and more than other neighbouring parts of that people, having no particular name) agreeing with ¹Homer's attribute of darkness to the *Cimmerians*; it had more specially this title.

§. To wife Molmutius's laws her Martian first did frame.

Particulars of *Molmutius's* laws, of church-liberty, freedom of ways, husbandry, and divers other are in the *British* story, affirming also, that queen *Martia* made a book of laws, translated afterward, and titled by king *Alfred* *Mercen-lage*. Indeed it appears that there were three sorts of ¹laws in the *Saxon* heptarchy, *Mercen-lage*, *Dan-lage* ²ἡμετεροῦ ἄλλοθεν, i. e. the *Mercian*, *Danish*, and *West-Saxon* law; all which three had their several territories, and were in divers things compiled into one volume by *Chut*, and examined in that *Norman* constitution of their new common-wealth. But as the *Danish* and *West-Saxons* had their name from particular people; so it seems, had the *Mercian* from that kingdom of *Mercland*, limited with the *Lancashire* river *Mersy* toward *Northumberland*, and joining to *Wales*, having either from the river that name, or else from the word *meape*, a limit or bound, because it bounded upon most of the other kingdoms; as you may see to the eleventh song.

§.—in whose eternal name,
Great London still shall live —

King *Lud's* re-edifying *Troinouvant* (first built by *Brute*) and thence leaving the name of *Cacr Lud*, afterward turned (as they say) into *London*, is not unknown, scarce to any that hath but looked on *Ludgate's* inner frontispiece; and in old ³rhymes thus I have it expressed.

Wallas † he lete make al aboute and patre up and down
And after Lud that was is name he clupep it Lude towne.
The herte pate of the town that put ffont there and is
He let he clupep Ludgate after his owne name thus,
He let him the he was ded burie at thuthe pate
Wherhepse put after him the clupep it Ludgate,
The town the clupep it is wode couth
And now the clupep it London that is lighter in the moun.
And new Troy it het ere, and now it is so ago
That London it is now icluped and woeth ebre mo.

Judicious reformers of fabulous report I know have more serious derivations of the name; and seeing conjecture is free, I could imagine, it might be called at first *Ihan Dien*, i. e. the temple of *Diana*, as *Ihan-Dewi*, *Ihan Stephan*, *Ihan Patern* *Wauw*, *Ihan Clark*, i. e. *S. Dewi's*, *S. Stephen's*, *S. Patern* the great, *S. Mary*; and *Verulam* is by *H. Lbuid*, derived from *Aer-Ihan*, i. e. the church upon the river *Ver*, with divers more such places in *Wales*; and so afterward by strangers turned

into *Londinium*, and the like. For, that *Diana* and her brother *Apollo* (under name of *Belin*) were two great deities among the *Britons*, what is read next before, *Caesar's* testimony of the *Gauls*; and that she had her temple there where *Paul's* is, relation in *Camden* discloses to you. Now, that the antique course was to title their cities oft-times by the name of their power adored in them, is plain by *Beth-el* among the *Hebrews*, *Heliopolis* (which in holy writ is ¹called ²בית-שמש in *Egypt*, and the same in *Greece*, *Phaenicia*, elsewhere; and by *Athens* named from *Minerva*. But especially from this supposed deity of *Diana* (whom in substance *Homer* no less gives the epithet of *ἡμετερον* ³patron of cities, than to *Pallas*) have divers had their titles; as *Artemisium* in *Italy*, and *Eubaea*, and that ⁴*Bubastis* in *Egypt*, so called from the same word, signifying in *Egyptian*, both a cat and *Diana*.

§. Those armed stakes in Thames—

He means that which now we call *Coway-stakes* by *Otelands*, where only, the *Thames* being without boat passable, the *Britons* fixed both on the bank of their side, and in the water ⁵sharp stakes, to prevent the *Romans* coming over; but in vain, as the stories tell you.

§. And more than Caesar got, three emperors could not win.

Understand not that they were resisted by the *Britons*, but that the three successors of *Julius*, i. e. *Augustus*, *Tiberius*, and *Caligula*, never so much as with force attempted the isle, although the last after king *Cunobelin's* son, *Adminus*, his traitorous revolting to him, in a seeming martial vehemency, made ⁶all arm to the *British* voyage, but suddenly in the *German* shore, (where he then was) like himself, turned the design to a jest, and commanded the army to gather cockles.

§. Came with his body naked, his hair down to his waist.

In this *Caradoc* (being the same which at large you have in *Tacitus* and *Dio*, under name of *Caratacus* and *Cataracus*, and is by some *Scottish* historians drawn much too far northward) the author expresses the antient form of a *Briton's* habit. Yet I think not that they were all naked, but, as is affirmed ⁷of the *Gauls*, down only to the navel; so that on the discovered part might be seen (to the terror of their enemies) those pictures of beasts, with which ⁸they painted themselves. It is justifiable by *Caesar*, that they used to shave all except their head and upper lip, and wear very long hair; but in their old coins I see no such thing warranted; and in later ⁹times about cccc years since, it is especially attributed to them, that

¹ Odyss. A. ² Hes. ³ ἡμετερον, ⁴καταπολις.

⁵ But it is affirmed that king *Collé's* daughter, mother to *Constantine* the Great, walked this first, and Colchester also.

⁶ Huntingdon. lib. 1. & Simon Dunelmensis. ap. Stron. in notitia Londini.

⁷ xliii. coman. ult. ⁸ V. Homer. hymn. ad Dian.

⁹ Sueton. lib. 4. cap. 44. & 46. & Dio Cassius.

¹⁰ Girald. descript. cap. 10.

¹ Gervaz. Tilberienfis de sacrorio.

² I shall presently speak of her also.

³ Stephan. ⁴ greci ⁵ in ⁶ B. C. C. Herodot. lib. 2.

⁷ Polybius hist. 7.

⁸ Rob. Glo.

⁹ Jerem. cap.

¹⁰ Bed. lib. 1. cap. 2.

¹¹ Solin. polyhist. cap. 11.

they always cut their heads close for avoiding *Abisalon's* misfortune.

S. The colony long kept at Maldon—

Old historians and geographers call this *Camaldunum*, which some have absurdly thought to be *Camelot* in the *Scottish* shieridom of *Sterling*, others have sought it elsewhere; but the *English* light of antiquity (*Camden*) hath surely found it at this *Maldon* in *Essex*, where was a *Roman* colony, as also at *Glocester*, *Chester*, *York*, and perhaps at *Colchester*. Which proves expressly (against vulgar allowance) that, there was a time when in the chiefest parts of this southern *Britany* the *Roman* laws were used, as every one that knows the meaning of a colony (which had all their rights and institutions deduced with it) must confess. This was destroyed upon discontentment taken by the *Iceni* and *Trinobantes* (now *Norfolk*, *Suffolk*, *Middlesex*, and *Essex* men) for intolerable wrongs done to the wife and posterity of *Prasutagus* king of the *Iceni* by the *Romans*, which the king (as others in like form) thought, but vainly, to have prevented by instituting *Nero*, then emperor, his heir. The signs, which the author speaks of, were a strange, and, as it were, voluntary falling down of the goddess's *Victory's* statue, erected by the *Romans* here; women, as distracted, singing their overthrow; the ocean looking bloody; uncouth howlings in their assemblies; and such like. *Petilius Cerealis*, lieutenant of the ninth legion, coming to aid, lost all his foot-men, and betook himself with the rest to his fortified tents. But for this read the history.

S. By poison end her days—

So *Tacitus*; but *Dio*, that she died of sickness. Her name is written diversely *Voadicia*, *Boodicia*, *Bunduica*, and *Bondicea*; she was wife to *Prasutagus*, of whom last before.

S. A greater foe to us in our own bowels bred.

Every story, † of the declining *British* state will tell you what miseries were endured by the hostile irruptions of *Scots* and *Picts* into the southern part. For the passage here of them, know, that the *Scottish* stories, which begin their continued monarchick government at *Fergus*, affirm the *Picts* (from the *Scythian* territories) to have arrived in the now *Jutland*, and thence passed into *Scotland* some cct. years after the *Scots* first entering *Britain*, which was, by account, about lxxx years before our Saviour's birth, and thence continued these a state by themselves, until king *Kenneth* about dccc.xl. years after Christ, utterly supplanted them. Others, as *Bede* and his followers, make them elder in the time than the *Scots*, and fetch

them out of *Ireland*; the *British* story (that all may be discords) says, they entered *Albania* under conduct of one *Roderic* their king; (for so you must read in † *Monmouth* and not *Londric*, as the print in that and much other mistakes) and were valiantly opposed by *Marius* then king of *Britons*, *Roderic* slain, and *Cathenes* given them for habitation. This *Marius* is placed with *Vespasian*, and the gross differences of time make all suspicious; so that you may as well believe none of them, as any one. Rather adhere to learned *Camden*, making the *Picts* very genuine *Britons*, distinguished only by accidental name, as in him you may see more largely.

S. Arviragus of our's first taking to protect.

His marriage with (I know not what) *Genissa*, daughter to *Claudius*, the habitude of friendship betwixt *Rome* and him, after composition with *Vespasian* then, under the emperor, employed in the *British* war, the common story relates. This is *Arviragus*, which *Juvenal* † speaks of. *Polydore* refers him to *Nero's* time, others rightly to *Domitian*, because indeed the poet † then flourished. That fabulous *Helior Boetius* makes him the same with *Phasuiragus*, as he calls him, in *Tacitus*; he means *Prasutagus*, having misread *Tacitus* his copy.

S. This happiness we have Christ crucify'd to know.

Near c.lxxx after Christ, (the chronology of *Bede* herein is plainly false, and observe what I told you of that kind to the fourth song) this *Lucius*, upon request to pope *Eleutherius*, received at the hands of *Engatius* and *Damianus*, holy baptism; yet so, that by *Joseph of Arimathea* (of whom to the third song) seeds of true religion were here before sown: by some I find it without † warrant, affirmed that he converted *Arviragus*,

And gave him then a shilde of silver white,
A crosse endlong and overthwart full perfect,
These armes were used through all Britaine
For a common signe each man to know his nation
From enemies, which now we call certain,
George's armes—

But thus much collect, that, although until *Lucius* we had not a christian king (for you may well suspect, rather deny, for want of better authority, this of *Arviragus*) yet (unless you believe the tradition of *Gundast* king of *India*, † converted by *S. Thomas*, or *Abagar* † king of *Edessa*, to whom those letters written, as is supposed, by our Saviour's own hand, kept as a precious relic in † *Constantinople*

† Helior. Boet. lib. 3.
floch. lib. 4. not. 36.

* Antiq. Inscrip. lapideae & numm.
* Agellius lib. 16. cap. 13.

* V. Foresecut. de laud. leg. Ang. cap. 17 & Vium Bassing.
* Tacitus, annal. 14. Dio lib. 6.

† Pictorum in Britannia
† Pictorum in Britannia

(postea Pictorum ita. n. legunt) primus memorat Romanorum panegyristes ille inter alios, qui Constantium encomiis adloquitur, & si placet, adeas Humfred. Lhud. brev. Brit. & Buchanan. lib. 2. rer. Scotic. aut Camdeni Scotos & Pictos. Rob. Gloucesteri dicuntur Pictos.

* Galfredus Monmouthensis correctus, & ibidem vice 77. Matinarius lege Veltmaria.

* Saur 4.

* Suidas in Juvenali.
† parum sunt memores.

* Ex Niceno Harding. cap. 48. Ab Codices 11. quos consiluisse me Nenni antiquos consiluisse
† Nicet. Chionist. in Andronic. Comen.
nen. lib. 2.

* Nicephor. Callist. lib. 2. cap. 7. & 2.

until the emperor *Isaacius Angelus*, as my authors say, were sent) it is apparent that this island had the first christian king in the world, and clearly in *Europe*, so that you cite not *Tiberius* his private seeming christianity (which is observed out of *Tertullian*) even in whole time also *Gildas* affirms, *Britain* was comforted with wholsom beams of religious light. Not much different from this age was *Donald* first king christian of the *Scots*; so that if priority of-time swayed it, and not custom, (derived from a communicable attribute given by the popes) that name of *most christian* should better fit our sovereigns than the *French*. This *Lucius*, by help of those two christian aids, is said to have, in room of three archslamens and twenty eight flamens (through whose doctrine, polluting sacrifices, and idolatry reigned here instead of true service) instituted three archbishopricks at *London*, *Tork*, and *Caerleon* upon *Uske*, and twenty eight bishopricks; of them, all beyond *Humber* subject to *Tork*; all the now *Wales* to *Caerleon*; to *London*, the now *England* with *Cornwal*. And so also was the custom in other countries, even grounded upon *St. Peter's* own command, to make substitution of archbishops or patriarchs to archslamens, and bishops to flamens, if you believe a pope's assertion. For *Tork*, there is now a metropolitan see; *Caerleon* had so until the change spoken of to the fifth song. And *London*, the cathedral church being at *St. Peter's* in *Cornhill*, until translation of the *pal* to *Canterbury* by *Angusline*, sent hither by *Gregory I.* under king *Ethelbert*, according to a prophecy of *Merlin*, that *Christianity should fail, and then revive when the see of London did adorn Canterbury*, as, after coming of the *Saxons*, it did. This moved that ambitious *Gilbert of Folioth*, bishop of *London*, to challenge the primacy of *England*; for which he is bitterly taxed by a great clerk of the same time. If I add to the *British* glory that this *Lucius* was cause of like conversion in *Bavaria* and *Rhetia*, I should out of my bounds. The learned *Mark Velfer*, and others, have enough remembered it.

§. Constantius worthy wife—

That is *Helen*, wife to *Constantius* or *Constantinus Chlorus* the emperor, and mother to *Constantine* the great, daughter to *Coile* king of *Britain*, where *Constantine* was by her brought forth. Do not object *Nicephorus Callistus* that erroneously affirms him born in *Drepanum* of *Bithynia*, or *Jul. Firmicus*,¹ that says at *Tarsus*, upon which testimony (not uncorrupted) a great critick² had violently offered to deprive us both of him and his mother, affirming her *Bithynian*; nor take advantage of *Ce-*

drenus, that will have *Dacia* his birth soil. But our histories, and with them, the *Latin* ecclesiastick relation (in passages of her invention of the cross, and such like) allowed also by cardinal *Baronius*, make her thus a *British* woman. And for great *Constantine's* birth in this land, you shall have authority; against which I wonder how *Lipsius* durst oppose his conceit. In an old panegyrist,³ speaking to *Constantine*; *Libravus ille* (he means his father) *Britannias servitute, tu etiam nobiles illic oriendo fecisti; He freed Britain of bondage, thou enobledst it with thy birth*; and another,⁴ *O fortunata & nunc omnibus beatorum terris Britannia, quae Constantinum Caesarem prima vidisti; O happy Britain that first of all sawest Constantine*. These might persuade, that *Firmicus* were corrupted, seeing they lived when they might know as much of this as he. *Nicephorus* and *Cedrenus*, are of much later time, and deserve no undoubted credit. But in certain oriental admonitions⁵ of state (newly published by *John Meursius*, professor of Greek story at *Leyden*) the emperor *Constantine Porphyrogenetes* adviſes his son *Romanus*; that he should not take him a wife of alien blood, because all people dissonant from the government and manners of the empire by a law of *Constantine*, established in *S. Sophy's* church,⁶ were prohibited the height of that glory, excepting only the *Franks*, allowing them this honour, *ὅτι ἐκ αὐτοῦ τοῦ γένους ἐστὶ τὸ αἷμα τῶν βασιλέων, because he was born in their parts*, which might make you imagine him born in *Gaul*. Let it not move you, but observe that this *Porphyrogenetes* lived about 200 years since, when it was (and among the *Turks* still is) ordinary with these *Greeks* to call all⁷ (especially the western) *Europeans* by the name of *Franks*, as they did themselves *Romans*. Why then might not we be comprehended, whose name, as *English*, they scarce, as it seems, knew of, calling us *Inclins*; and indeed the indefinite form of speech in the author I cite, shews as if he meant some remote place by the *Franks*, admitting he had intended only but what we now call *French*. If you can believe one of our country men⁸ that lived about *Hen. II.* he was born in *London*; others think he was born at *Tork*; of that, I determine not. Of this *Helen*, her religion, finding the cross, good deeds in walling *London* and *Chelchester* (which in honour of her, they say, bears a cross between four crowns, and for the invention she is yet celebrated in holyrood day in *May*) and of this *Constantine* her son, a mighty and religious emperor, (although I know him taxed for no small faults by ecclesiastick writers) that in this air received his first light and life, our *Britons* vaunt not unjustly; as in that spoken to king *Arthur*.⁹

¹ Distinct. 10. cap. in illis. *Clement* pp.

² Pontic. vide *Basingthorpe*, hist. 9. not. 11. *Stow's Survey* of *London*, p. 479.

³ Liv. 1. cap. 4. ⁴ Lipsi. de Rom. magnitud. lib. 4. cap. 11. nimium lapsus.

⁵ Panegyric. *Maximiano*, &c. ⁶ Panegyric. *Faustino*, *Constantino*.

⁷ *Utriusque* 9. *hanc* multum hic mortuam.

⁸ *Nicet. Choniat.* 2. *Isaac Angel.* §. ult. *Isidorus*.

⁹ *Glocestren.*

¹ V. *Kenulph*, in epist. ad *Leonem* pp. apud *G. Malmesb.* lib. 1. de reg. & 2. de

Constantino, in epistol. 171.

² *Mathew.* 23. ³ *Panegyric.* *Maximiano*, &c.

⁴ *Panegyric.* *Maximiano*, &c.

⁵ *Utriusque* 9. *hanc* multum hic mortuam.

⁶ *Nicet. Choniat.* 2. *Isaac Angel.* §. ult. *Isidorus*.

⁷ *G. Stephanides* de *London.* *Basingthorpe*, hist. 6. not. 10.

⁸ *Rob.*

Now it wozth tended that *Sibyl* the sage sede bi-
woye

That there floss of Britaine the men be poyre
That those winne the tumppe of Rome; of
twepe pdo it is.

As of * Bely and Constantine, and thou art the
thjedde y wis.

For this *Sibyl* who she was, I must take day
to tell you.

§. Against the Arrian sect at Arles having run.

In the second council at Arles, in *Provence*, held under *Constantine* and *Sylvestre*, is subscribed the name of *Resitutus*, bishop of *London*, the like respectively in † other councils spoken of by the author. It is not unfit to note here, that in later time the use hath been (when and where *Rome's* supremacy was acknowledged) to send always to general councils, out of every christian state, some bishops, abbots, and priors; and I find it affirmed by the clergy under † *Hen. II.* that to a general council, only four bishops are to be sent out of *England*. So, by reason of this course added to state allowance afterward at home, were those canons received into our law; as of *bigamy* in the council of *Lyons*, interpreted by parliament under *Edward I.* of pluralities in the council of *Lateran*, held by *Innocent III.* reigning our king *John*; And the law of *lapse* in benefices had so it's ground from that council of *Lateran* in CIO.CXXIX under *Alexander III.* whither, for our part, were sent *Hugh* bishop of *Durham*, *John* bishop of *Norwich*, *Robert* bishop of *Hereford*, and *Rainold* bishop of *Bath*, with divers abbots, where the † canon was made for presentation within six months, and title of *lapse* given to the bishop in case the chapter were patron, from the bishop to them if he were patron; which, although, in that, it be not law with us, nor also their difference between a † lay and ecclesiastick patron for number of the months, allowing the layman but four, † yet shews itself certainly to be the original of that custom antiently and now used in the ordinary's collation. And hither *Henry of Bracton* † refers it expressly; by whom you may amend *John le Briton*, † and read *Lateyan* in stead of *Lyons*, about this same matter. Your conceit, truly joining these things, cannot but perceive that canons and constitutions, in popes councils, absolutely never bound us in other form than fitting them by the square of *English* law and policy, our reverend sages and baronage † all owed and interpreted them, who in their formal † writs would mention them as law and custom of the kingdom, and not otherwise.

§. Eleven thousand maids sent those our friends again.

Our common story affirms; that in time of

Gratian the emperor, *Conan* king of *Armorick Britain* (which was filled with a colony of this isle by this *Conan* and *Maximus*, otherwise *Maximian* that slew *Gratian*) having war with the neighbouring *Gauls*, desired of *Dinoh* regent of *Cornwal*, or (if you will) of our *Britain* (by nearness of blood, so to establish and continue love in the posterity of both countries) that he might himself match with *Dinoh's* daughter *Ursula*, and with her a competent multitude of virgins might be sent over to furnish his unwived bachelors; whereupon were XI.CIO of the nobler blood with *Ursula*, and LX.CIO of meaner rank (elected out of divers parts of the kingdom) shipped at *London* for satisfaction of this request. In the coast of *Gaul*, they were by tempest disperfed; some ravished by the ocean; others for chaste denial of their maidenheads to *Guaine* and *Melga*, kings of *Huns* and *Pists*; (whom *Gratian* had animated against *Maximus*, as usurping title of the *British* monarchy) were miserably put to the sword in some *German* coast, whither misfortune carried them. But because the author slips it over with a touch, you shall have it in such old † verse, as I have.

This maidens were pygaded and to London come.

¶ And were glad ther of and wel fori come.

¶ That † his floss of londre wende and newe † of hoz frend pte.

¶ And some to lese hoz maidenhod wibis hoz to be.

¶ Tho hi were in ships pdo, and in the se ber were

¶ So gret tempest ther come that drow hem here and there.

¶ So that the † merkedaby cinto were in the se

¶ And to other londs some yoyice, that ne come never †

age.

¶ King there was of Hungre, Guaine was his name

¶ And † Melga h. Picardie that couthe inous of fame.

¶ The water's hoz to loki aboute the se hit were

¶ A companie of this mapens so that hit met there.

¶ So hoz folie hit wolde † home nime, and hoz men also,

¶ The mapens wolde rather bie than concept therto.

¶ Tho wende both the † futher men and the maidens

flowe rhyone

¶ So that to the lasse Britaine there ne come alioe none.

¶ They. † Their. † Most part. † Again

†† Of the Pists. †† Them take. †† Leud.

Some lay all this wickedness absurdly (for

time endures it not) to *Attila's* † charge, who

reigned king of *Huns* about cccc.L. (above LX.

years after *Gratian*) and affirm their sufferings

of this (as they call it) martyrdom at *Cologne*,

whither, in at the mouth of *Rhine*, they were

carried; Others also, particularly tell you that

there were four companions to *Ursula*, in

greatness and honour, their † names being *Pyn-*

nosa, *Cordula*, *Florentia*, and *Lucia*, and that

under these, were to every of the XI.CIO. one

president, *Iota*, *Benigna*, *Clementia*, *Sapientia*,

Carpophora, *Columba*, *Benedicta*, *Odilia*, *Ce-*

lyndria, *Sibylla* and *Lucia*; and that custom

at *Cologne* hath excluded all other bodies from

the place of their burial. The strange multitude

of LXI.CIO. virgins thus to be transported,

* Belinus.

† 1. Tom. Concil.

† Roger Hoveden, fol. 332.

† G. Nugent, (cujus editionem nuperam

& Jo. Picardi annotationes confusas) lib. 3. cap. 3. & Hoveden, habent ipsas, quas sunt, confusiones.

† Extravag. concil.

† Lib. 4. tract. 3. cap. 6.

† D. Ed. Coke lib. de pure regis ecclesiasticis.

† Regit. orig. fol. 43.

† Rob. Gloucestrensis.

† Hecctor. Boet. hist. Scotic. 7. az antiquioribus, verum falsi reit.

† Ufuard. martyrolog. 21. Octob.

with the difference of time (the most excellent note to examine truth of history by) may make you doubt of the whole report. I will not justify it, but only admonish thus, that those our old stories are in this followed by that great historian *Baronius*, allowed by *Francis de Bar*, *White of Basinroke*, and before any of them, by that learned abbot *Trithemius*, beside the martyrologies, which to the honour of the *XI. CIO* have dedicated the *XI. day* of our *October*. But indeed how they can stand with what in some copies of *Nennius*^c we read, I cannot see: It is there reported, that those *Britons* which went thither with *Maximus* (the same man and time with the former) took them *Gaulish* wives, and cut out their tongues, least they should possess their children of *Gaulish* language; whence our *Welsh* called them afterward *leith-widion*, half silent, because they spoke confusedly. I see^d that yet there is great affinity betwixt the *British Armorick*, and the *Welsh*, the first (to give you a taste) saying *Don tad pebunil fou en efau*, the other, *En tad yr hwn pobit yn y nefocdd*, for *Our Father which art in heaven*; But I suspect extremely that fabulous tongue-cutting, and would have you, of the two, believe rather the virgins, were it not for the exorbitant number, and that, against infallible credit, our historians mix with it *Gratian's* surviving *Maximus*; a kind of fault that makes often the very truth doubtful.

S. That from the Scythian poor, whence they themselves derive.

He means the *Saxons*, whose name, after learned men, is to the fourth song derived from a *Scythian* nation. It pleases the muse in this passage, to speak of that original, as mean and unworthy of comparison with the *Trojan British*, drawn out of *Jupiter's* blood by *Venus*, *Anchises*, and *Aeneas*; I justify her phrase, for that the *Scythian* was indeed poor, yet voluntarily, not through want, living commonly in field tents; and (as our *Germans* in *Tacitus*) so *Stoical*, as not to care for the future, having provision for the present, from nature's liberality. But, if it were worth examining, you might find the *Scythian* as noble and worthy a nation as any read of; and such a one as the *English* and others might be as proud to derive themselves from, as any which do search for their ancestors glory in *Trojan* ashes. If you believe the old report^e of themselves, then can you not make them less than descended by *Targiteus* from *Jupiter* and *Borysthenes*; if what the *Greeks*, who, as afterward the *Romans* accounted and stiled all barbarous, except themselves; then you must draw their pedigree through *Agathyrus*, *Gelonus*, and *Scythia*, from *Hercules*; neither of these have, in this kind, their superior. If among them you desire learning, remember *Zamolxis*, *Diceneus*, and *Anacharsis* before the rest. For although to some of these, other patronymicks are given, yet

know that antiently (which for the present matter observe seriously) as all, southward, were called *Aethiopians*, all eastward, *Indians*, all west, *Celts*, so all northern were stiled *Scythians*; as^h *Ephorus* is author. I could add the honourable allegories, of those their golden yoke, plough, hatchet, and cup, sent from heaven, wittily enough delivered byⁱ *Goropius*, with other conjectural testimonies of their worth. But I abstain from such digression.

Illustrations on the ninth song.

More western are you carried into *Merioneth*, *Caernarvan*, *Anglesey*, and those maritime coasts of north *Wales*.

S. The last her genuine laws which stoutly did retain.

Under *William Rufus*, the *Norman English* (animated by the good success which *Robert Fitz-Hamon* had first against *Rees ap Tiddour*, prince of south *Wales*, and afterward against *Iestlin*, lord of *Glamorgan*) being very desirous of these *Welsh* territories; *Hugh*,^k surnamed *Wolf*, earl of *Chester*, did homage to the king for *Tegengl* and *Ryvonior*, with all the land by the sea unto *Conway*. And thus pretending title, got also possession of *Merioneth*, from *Gruffith ap Conan*, prince of north *Wales*; but he soon recovered it, and thence left it continued in his posterity, until *Lheuwelyn ap Gruffith*, under *Edward I.* lost it, himself, and all his dominion. Whereas other parts (of south and west *Wales* especially) had before subjected themselves to the *English* crown; this, through frequency of craggy mountains, accessible with too much difficulty; being the last strong refuge until that period of fatal conquest.

S. Of those two noble arms into the land that bear.

In the confines of *Merioneth* and *Cardigan*, where these rivers jointly pour themselves into the *Irish* ocean, are these two arms or creeks of the sea, famous, as he saith, through *Guineithia* (that is, one of the old titles of this north *Wales*) by their names of *traeth mawr* and *traeth bachan*, i. e. the great haven, and the little haven; *traeth*, in^l *British*, signifying a tract of sand, whereon the sea flows, and the ebb discovers.

S. Into that spacious lake where Dee unmixed doth flow.

That is *Llyn-tegid* (otherwise called by the *English* *Pemelfmere*) through which, *Dee* rising in this part runs whole and unmixed, neither lake nor river communicating to each other water or fish; as the author anon tells you. In the^m antients, is remembered specially the like of *Rhosne* running unmixed, and (as it were) over the lake of *Geneva*; as for a greater wonder, the most learned *Casaubon*ⁿ hath delivered also of *Arva*, running whole through

^a Sunt enim antiqui codices quibus hoc merito deest, nec. n. ut glossa illud non irreperisse, sentire sum potis.

part. 2. lib. 3. cap. 11.

^b Herodot. Melpom. 4.

^c Apud Strab. lib. 4.

^d Paul. Merul. cosmog.

Caradoc. Llancar. & Camd.

^e Girald. itinerar. 2. cap. 6.

^f Roscel. ad

hail. nat. 2. cap. 103.

^g Ad Strabon. lib. 4.

^h Ammian. Marcel. hist. 15. Pomp. Mel. lib. 2. Plin.

Rhosne; and divers others such like are in *Pliny's* collection of nature's most strange effects in waters.

§. *The multitude of swolves that long this land annoy'd.*

Our excellent *Edgar* (having first enlarged his name with diligent and religious performance of charitable magnificence among his *English*, and confirmed the far spread opinion of his greatness, by receipt of homage at *Chester*, from eight kings; as you shall see in and to the next song) for increase of his benefits towards the isle, joined with preservation of his crown duties, converted the tribute of the *Welsh* into ceciwolves a year, as the author shews; the king that paid it,

*Hez pre he bulis termevent ac the brethe tows behind
Wloz he sende the king woopd that he ne mighte ne mo bindre.*

as, according to the story my old rhimer delivers it. Whom you are to account for this *Ludwall* king of *Wales* in the *Welsh* history, except *Howel ap Ieuaf*, that made war against his uncle *Jago*, delivered his father, and took on himself the whole principality towards the later years of *Edgar*, I know not. But this was not an utter destruction of them; for, since that time, the manor of *Piddlesey* in *Leicester-shire* was held by one *Henry of Angage*, *per sequeantiam capiendi lupos*, as the inquisition delivers it.

§. *S. Helen's wondrous way—*

By *Festeneog*, in the confines of *Caernarvan* and *Merioneth*, is this high way of note; so called by the *British*, and supposed made by that *Helen*, mother to *Constantine*, (among her other good deeds) of whom to the last song before.

§. *As level as the lake until the general flood.*

So is the opinion of some divines, that, until after the flood, were no mountains, but that by congection of sand, earth, and such stuff as we now see hills strangely freighted with, in the waters they were first calt up. But in that true secretary of divinity and nature, *Solomon*, speaking as in the person of *Wisdom*, you read, *Before the mountains were founded, and before the hills I was formed*, that is, before the world's beginning; and in holy writ elsewhere, *The mountains ascend, and the valleys descend to the place where thou didst found them*; Good authorities to justify mountains before the flood. The same question hath been of isles, but I will peremptorily determine neither.

§. *And with stern AEolus blasts, like Thetis waxing rank.*

The south-west wind constrained between two hills on both sides of the lake, sometimes so violently fills the river out of the lake's store, that both have been affirmed (but somewhat against truth) never to be disturbed, or overflow, but upon tempestuous blasts, whereas indeed (as *Powel* delivers) they are overfilled with rain and land floods, as well as other waters; but most of all moved by that impetuous wind.

§. *Still Delos like, wherein a wand'ring isle doth float.*

Of this isle in the water on top of *Snowdon*, and of one eyed eels, trouts, and perches, in another lake there, *Girald* is witness. Let him perform his word; I will not be his surety for it. The author alludes to that state of *Delos*, which is feigned, 'before it was with pillars fastened in the sea, for *Latona's* childbirth.

§. *That with the term of Welsh the English now imbase.*

For this name of *Welsh* is unknown to the *British* themselves, and imposed on them, as an antient and common opinion is, by the *Saxons*, calling them *walsh*, i. e. *strangers*. Others fabulously have talked of *Wallo* and *Wandolena*, whence it should be derived. But you shall come nearer truth, if upon the community of name, customs, and original, betwixt the *Gauls* and *Britons*, you conjecture them called *Walsh*, as it were, *Gualsh* (the *W* oftentimes being in stead of the *G*) which expresses them to be *Gauls* rather than strangers; although in the *Saxon* (which is 'observed') it was used for the name of *Gauls*, *strangers*, and *barbarous*, perhaps in such kind as in this kingdom the name of 'Frenchman, hath by inclusion comprehended all kind of aliens.

§. *Was Little Britain called—*

See a touch of this in the passage of the virgins to the eighth song. Others affirm, that under 'Constantine, of our *Britons*, colonies were there placed; and from some of these the name of that now dukedom, to have had its beginning. There be 'also that will justify the *British* name to have been in that tract long before, and for proof cite *Dionysius* 'Afer, and 'Pliny; but for the first, it is not likely that he ever meant that continent, but this of ours, as the learned tell you; and for *Pliny*, seeing he reckons his *Britons* of *Gaul* in the confines of the now *France*, and lower *Germany*, it is as unlikely that betwixt them and little *Bretagne* should be any such habitude. You want not authority, affirming that our *Britons* from them, before they from ours, had deduction of this national title; but my belief admits it not. The surer opinion is to refer the name unto

thofe

* Ilin, Leicest. 27 Hen. III. in archiv. turr. London.

* Proverb. viii. * Psalm. civ. * Pindar. ap. Strabon. lib. 10.

lib. 2. tract. 2. cap. 16. leg. G. conquest. & d. Coke in cas. Calvin.

part. 2. lib. 3. cap. 12. * V. Eustach. ad eundem.

duxisse, miror p. Meralum tam constanter affirmasse.

* His post alios refragatur B. Pterius ad Genes. 2. quæst. 201.

* Buchanan. Scotie. hist. 2.

* Bradt.

* Hist. nat. lib. 4. cap. 17. quem super Ligerim Britannos hos suos

* Bed. lib. 1. cap. 3. quem secutus P. Merial.

those *Britons*, (which being expelled the island at the entry of the *Saxons*) got then new habitation in this maritime part, as beside other authority, an express assertion is in an old fragment of a *French history*,* which you may join with most worthy *Camden's* treatise on this matter; whither (for a learned declaration of it) I send you.

§. Forewarned was in dreams that of the Britons reign.

Cadwallader driven to forsake this land, especially by reason of plague and famine, tyrannizing among his subjects, joined with continual irruptions of the *English*, retired himself into little *Bretagne*, to his cousin *Alan* their king; where, in a dream, he was admonished by an angel, (I justify it by the story) that a period of the *British* empire was now come, and until time of *Merlin's* prophecy, given to king *Arthur*, his country or posterity should have no restitution; and farther, that he should take his journey to *Rome*, where, for a transitory, he might receive an eternal kingdom. *Alan* upon report of this vision, compares it with the *ea-gles* prophecies, the *Sibyl's* verses, and *Merlin*; nor found he but all were concurring in prediction of this ceasing of the *British* monarchy. Through his advice therefore, and a prepared affection, *Cadwallader* takes voyage to *Rome*, received of PP. *Sergius*, with holy tincture, the name of *Peter*, and within very short time there died; his body very lately under pope *Gregory XIII.* was found^d buried by St. *Peter's* tomb, where it yet remains; and *White of Basingstoke* says, he had a piece of his raiment of a chequered colour, taken up (with the corps) uncorrupted; which he accounts, as a *Romish* pupil, no slight miracle. It was added among *British* traditions, that, when *Cadwallader's* bones^e were brought into this isle, then should the posterity of their princes have restitution; concerning that, you have enough to the second song. Observing concurrence of time and difference of relation in the story of this prince, I know not well how to give myself or the reader, satisfaction. In *Monmouth*, *Robert of Gloucester*, *Florilegus*, and their followers, *Cadwallader* is made the son of *Cadwallo*, king of the *Britons* before him, but so, that he descended also from *English Saxon* blood; his mother being daughter to *Penda* king of *Mercland*. Our monks call him, king of west *Saxons*, successor to *Kentwine*, and son to *Kenbriht*. And where *Caradoc Llancarvan* tells you of wars betwixt *Ine* or *Ivor* (successor to *Cadwallader*) and *Kentwine*, it appears in our chronographers, that *Kentwine* must be dead above three years before. But howsoever these things might be reconcilable, I think clearly that *Cadwallader* in the *British*, and *Cadwallo*, king of west *Saxons*, in *Bede*, *Malmesbury*, *Flo-*

rence, *Huntingdon*, and other stories of the *English*, are not the same, as *Geoffrey*, and, out of *Girald*, *Randal of Chester*, and others, since erroneously have affirmed. But strongly you may hold, that *Cadwallo* or *Cadwallo*, living about DC.XI. slain by *Oswald* king of *Northumberland*, was the same with *Bede's* first *Cadwallo*, whom he calls king of *Britons*, and that by misconception of his two *Cadwallo's* (the other being, almost 1. years after, king of west *Saxons*) and by communicating of each other's attributes upon indistinct names, without observation of their several times, these discordant relations of them, which in story are too palpable, had their first being. But to satisfy you in present, I keep myself to the course of our ordinary stories, by reason of difficulty in finding an exact truth in all. Touching his going to *Rome*, thus: Some will, that he was christian before, and received of *Sergius* only confirmation; others, that he had there his first baptism, and lived not above a month after; which time (to make all dissonant) is extended to eight years in *Llancarvan*. That, one king *Cadwallo* went to *Rome*, is plain by all, with his new imposed name and burial there: For his baptism before, I have no direct authority but in *Polychronicon*; many arguments proving him indeed, a well-willer to christianity, but as one that had not yet received its holy testimony. The very phrase in most of our historians, is plain that he was baptized; and so also his epitaph then made at *Rome*, in part here inserted.

* Percipiensque alacer rediditque premia
vitae,
Barbaricam rabiem, nomen & inde suum,
Conversus convertit ovans, Petrumque vocari,
Sergius antister, jussit ut ipse pater.
Fonte renascentis quem Christi gratia pur-
gans,
Protinus ablutum vexit in arce poli.

This shews also his short life afterward, and agrees fully with the *English* story. His honourable affection to religion, before his cleansing mark of regeneration, is seen in that kind respect, given by him to *Wilfrid* first bishop of *Selesey* in *Suffex*; where the episcopal see of *Chichester* (hither was it translated from *Selesey*, under *William* the conqueror) acknowledges in public monuments, rather him founder than *Edithwalch*, the first christian king of that province, from whom *Cadwallo* violently took both life and kingdom; nor doth it less appear, in that his paying teaths of such spoils, as by wars fortune, accrued to his greatnels; which notwithstanding, although done by one then not received into the church of either testament, is not without many examples among the ancient *Gentiles*, who therein imitating the *Hebrews*, tythed much of their possessions, and acquired substance

* Ex ms. Coenob. Floriac. edit. per P. Pithaeum. Higden lib. 1. cap. 20.

^d *Cadwallo* rex Britonum *Bede*. hist. eccles. 3. cap. 1. caeterum v. Nennium ap. *Camd.* in *Octadina* pag. 664, & 665, & *Bede* lib. 1. cap. 7.

^e *Bede*. eccles. hist. lib. 5. cap. 7. *Englished* in *judgement*, if you say, He was baptized, and soon died. A.C. 418. D.C. LXXXVIII. *Judicious conjecture cannot but attribute all this to the west Saxon Cadwall, and not the British, as to the eleventh Jew.*

^f Anton. maior. ap. *Basingstoke*. lib. 9. not. 32.

* *Ranulph*.

to such deities as unhallowed religion taught them to adore; which, whether they did upon mystery in the number, or, therein as paying first fruits (for the word כֶּכֶרֶךְ which was for *Abe's* offerings, and כֶּכֶרֶךְ for *Melchisedech's* thythes, according to that less^k calculation in cabalistical concordance of identities in different words, are of equal number, and by consequent of like interpretation) I leave to my reader. Speaking of this, I cannot but wonder at that very wonder of learnings,^l *Joseph Scaliger*, affirming, thythes among those antients, only payable to *Hercules*; whereas, by express witness of an^k old inscription at *Delphos*, and the common report of *Camillus*, it is justified, that both *Greeks* and *Romans* did the like to *Apollo*; and, no less, among them and others together, was to *Mars*,^l *Jupiter*,^m *Juno*,ⁿ and the number of gods in general, to whom the *Athenians* dedicated the tenth^o part of *Lesbos*. He which the author, after the *British*, calls here *Ivor*, is affirmed the same with *Ine* king of *Wessex* in our monkish chronicles, although there be scarce any congruity betwixt them in his descent. What follows, is but historical, and continued succession of their princes.

S. More excellent than those which our good Howel here.

For, *Howel Dha*, first prince of south *Wales* and *Powis*, after upon death of his cousin *Edwal Vael*, of north *Wales* also, by mature advice in a full council of barons and bishops, made divers universal constitutions. By these, *Wales* (until *Edward I.*) was ruled. So some say; but the truth is, that before *Ed. I.* conquered *Wales*, and, as it seems, from 28 but especially 35 of *Hen. III.* his empire enlarged among them, the *English* king's writ did run there. For when *Ed. I.* sent commission to *Reginald of Grey*, *Thomas*, bishop of *S. David's*, and *Walter of Hepton*, to inquire of their customs, and by what laws they were ruled, divers cases were upon oath returned; which by, and according to the king's law, if it were between lords or the princes themselves, had been determined; if between tenants, then by the lord's seising it into his hands, until discovery of the title in his court; but also that none were decided by the laws of *Howel Dha*. Of them, in *Lbwyd's* annotations to the *Welsh* chronicle, you have some particulars, and in the roll which hath aided me. Touching those other of *Molmutius* and *Martia*, somewhat to the ninth song.

S. Us to subjection sloop, or makes us, Britons, bear

Tb' unweildy Norman yoke —

Snowdon properly speaks all for the glory of his country, and follows suppositions of the *British* story, discording herein with ours.

For in *Matthew Paris*, and *Floriegeus*, under the year 1103.LXXVIII. I read, that the *Conqueror* subdued *Wales*, and took homage and hostages of the princes; so of *Hen. I.* 1103.C.XIII. *Hen. II.* in 1103.C.LVII. and other times. Of this *Hen. II.* hath been understood that prophecy of *Merlin*, when the freckle faced prince (so was the king) passes over * *rhod* *pencarn*, the ford at the rocks head, then should the *Welsh* forces be weakened. For he in this expedition against *Rees ap Gryffith* into south *Wales*, coming mounted near that ford in *Glamorgan*, his steed maddled with sudden sound of trumpets, on the bank violently, out of the purposed way, carries him through the ford; which compared with that of *Merlin*, gave to the *British* army no small discomfiture; as a *Cambro-Briton*, then living, hath delivered. But, that their stories and ours are so different in these things, it can be no marvel to any that knows how often it is used among^q historians, to flatter their own nation, and wrong the honour of their enemies. See the first note here for *Rufus* his time.

S. And from the English power, the imperial standard took.

Henry of Essex, at this time standard-bearer to *Hen. II.* in a straight at *Counslth* near *Flint*, cast down the standard, thereby animating the *Welsh*, and discomfiting the *English*, adding much danger to the dishonour. He was afterward accused by *Robert of Mountfort*, of a traitorous design in the action. To clear himself, he challenges the combat; they both, with the royal assent and judicial course by law of arms, enter the lists; where *Mountfort* had the victory, and *Essex* pardoned for his life; but forfeiting^r all his substance, entered religion, and professed in the abbey of *Reading*, where the combat was performed. I remember a great^s clerk of those times says, that *Mountfort* spent a whole night of devotions to *S. Denis*, (so I understand him, although his copy seem corrupted) which could make champions invincible; whereto he refers the success. That it was usual for combatants to pray over night to several saints, is plain by^t our law annals.

S. Or any ear had heard the sound of Florida.

About the year 1103.C.LXX *Madoc*, brother to *David ap Owen*, prince of *Wales*, made this sea voyage; and, by probability, those names of *Capo de Briton* in *Norumbeg*, and *Penguin* in part of the northern *America*, for a white rock, and a white headed bird, according to the *British*, were relics of this discovery. So that the *Welsh* may challenge priority of finding that new world, before the *Spaniard*, *Genoese*, and all other mentioned in *Lopez*, *Marinaeus*, *Cortez*, and the rest of that kind.

^k Ratio cabalistica minor, secundum quam e centenario quolibet e denario unitatem accipiunt, reliquos numeros in utroque vocabulo retinemes uti Archangel, Burgonovens in dog. cabalisticis. ^l Ad Festum verb. decima. ^m Clemens Alexand. Strom. 2. & Steph. de vi. in A. Ceteris, tantumdem i. prater alios quam plurimos. ⁿ Lucian etel Of. & Varro ap. Macrobi. 3. cap. 11. ^o Samii apud Herodot. 2. ^p Thucyd. lib. 2. ^q De quo, si placeat, videas compendiose apud Alberic. ^r Joan. Sarilurien. ep. 159. ^s 30 Ed. III. fol. 30. ^t Genit. de arm. Rom. 1. cap. 1. ^u Guil. de Novo Burgo, lib. 2. cap. 9.

§. And with that Croggins name let th' English us disgrace.

The first cause of this name, take thus: In one of *Hen. II.* his expeditions into *Wales*, divers of his camp sent to essay a passage over *Offa's* dike, at *Crogen* castle, were entertained with prevention by *British* forces, most of them there slain; and, to present view, yet lying buried. Afterward, this * word *Crogen*, the *English* used to the *Welsh*, but as remembering cause of revenge for such a slaughter, although time hath made it usual in ignorant mouths for a disgraceful attribute.

§. To his unbridled will, our necks we never bow'd.

Sufficiently justifiable is* this of king *John*, although our monks therein not much discording from *British* relation, deliver, that he subdued all *Wales*; especially this northern† part unto *Snowdon*, and received twenty hostages for surety of future obedience. For, at first, *Llewelin ap Iorwerth* prince of north *Wales*, had by force joined with stratagem the better hand, and compelled the *English* camp to virtual themselves with horse-flesh; but afterward indeed, upon a second inroad made into *Wales*, king *John* had the conquest. This compared with those changes ensuing upon the popes wrongful uncrowning him, his barons rebellion, and advantages in the mean time taken by the *Welsh*, proves only, that his winnings here were little better than imaginary, as one on a tragick stage. The stories may, but it fits not me to inform you of large particulars.

§. As fate had spar'd our fall till Edward Longhank's reign.

But withal, observe the truth of story in the mean time. Of all our kings until *John*, somewhat you have already. After him, *Hen. III.* had wars with *Llewelin ap Iorwerth*; who (a most worthy prince) desiring to bless his feeble days, with such composed quiet, as inclining age affects, at last put himself into the king's protection. Within short space dying, left all to his sons, *David* and *Gruffyth*; but *David* only being legitimate, had title of government. He, by charter,‡ submits himself and his principality to the *English* crown, acknowledges that he would stand to the judgment of the king's court in controversies betwixt his brother and himself; and that what portions soever were so allotted to either of them, they would hold of the crown in chief; and briefly makes himself and his barons (they joining in doing homage) tenants, and subjects of *England*. All this was confirmed by oath, but the oath through favour, purchased at *Rome*, and delegate authority in that kind to the abbots of *Covey* and *Remer*, was (according to persuasion of

those times, the more easily induced, because gain of regal liberty was the consequent) soon released, and in lieu of obedience, they all drew their rebellious swords; whereto they were the sooner urged, for that the king had transferred the principality of *Wales* (by name of *una cum conquestu nostro Walliae*§) to prince *Edward Longhanks* (after *Edward I.*) since when, our sovereigns eldest sons have born that hopeful title. But when this *Edward*, after his father, succeeded in the *English* crown, soon came that fatal conversion, here spoken of by the author, even executed in as great and worthy a prince, as ever that third part of the isle was ruled by; that is *Llewelin ap Gruffyth*, who (after uncertain fortune of war, on both sides, and revolting of south *Wales*) was constrained to enter a truce (or rather subjection) resigning his principality to be annexed wholly to the crown, after his death, and reserving, for his life only, the isle of *Anglesey*, and five baronies in *Snowdon*; for which, the king's exchequer should receive a yearly rent of six marks; granting also, that all the baronies in *Wales* should be held of the king, excepting those five reserved, with divers other particulars in *Walsingham*, *Matthew of Westminster*, *Nicholas Trevet*, and *Humphrey Lluyd*, at large reported. The articles of this instrument, were not long observed, but, at length, the death of *Llewelin*, spending his last breath for maintenance of his ancestors rights against his own covenant, freely cast upon king *Edward* all that, whereof he was, as it were, instituted there. What ensued, and how *Wales* was governed afterward, and subject to *England*, stories and the statute of *Rutlan*, will largely shew you; and see what I have to the seventh song. In all that follows concerning *Edward of Caernarvan*, the author is plain enough. And concluding, observe this proper personating of *Snowdon* hill, whose limits and adjacent territories are best witnesses, both of the *English* assaults, and pacifying covenants between both princes.

§. Was call'd in former times her country Cambria's mother.

In the *Welsh* proverb *Mon mam Cymru*, *Mon*, the mother of *Wales*,‡ in such sense as *Sicily* as was stiled, *Italy's store-house*, by reason of fertile ground, and pteous liberty of corn thence yearly supplied. And *Girald* tells me, that this little isle was wont to be able to furnish all *Wales* with such provision, as *Snowdon* hills were for pasture. Of its antiquities and particulars, with plain confutation of that idle opinion in *Polydore*, *Heitor Boethius*, and others, taking the (now called) isle of *Man* for this *Mon* (now *Anglesey*) learned *Lluyd* in his epistle to *Ortelius*, hath sufficient. Although it be divided as an isle (but rather by a shallow ford, than a sea; and in the *Roman*

* Guyon Owen in *Llewelin ap Iorwerth*.

† Note, that north *Wales* was the chief principality, and to it south *Wales* and *Powys* paid a tribute, as out of the laws of Howell Dda, is word by doct. Ruvet.

‡ *Giraldus* when imprisoned, was, with others, a pledge for her husband's part.

§ *Girald. itinerar.* 2. cap. 7. & 9.

* *Strabo* lib. 5.

‡ *Charters* Davison at *Hen. III.* Senen. 205.

• In *archiv. sceccar.* & *Polydore*. hist. Angl. 16.

times, we see by *Tacitus*, that *Paulinus* and *Agricola's* soldiers swam over it) yet is it, and of ancient time hath been, a county by itself, as *Caernarvan*, *Denbigh*, and the rest neighbouring.

§. *That the Eubonian Man; a kingdom long time known.*

It is an isle lying betwixt *Cumberland*, and the *Irish Down* county, almost in the mid sea, as long since *Julius Caesar* could affirm, calling it *Mona*, which being equivalent, as well for this, as for *Anglesey*, hath with imposture blinded some knowing men. *Nennius* (the eldest historian amongst us extant) gives it the name of *Eubonia-manay*, like that here used by the author. It was of ancient time governed by kings of its own, as you may see in the chronicle of *Ruffin*, deduced from time of *S. Edward*, into the reign of *Edward II.* After this the government of the *English* and *Scots* were now and then interchanged in it, being at last recovered, and with continuance, ruled by such as the favour of our sovereigns (to whose crown it belonged) honoured with that title, *king of Man*. It is at this day, and since time of *Henry IV.* hath been, in that noble family of the *Stanleys* earls of *Derby*; as also is the patronage of the bishoprick of *Sodor*, whereto is all judicial government of the isle referred. There was long since a controversy, whether it belonged to *Ireland* or *England* (for you may see in the civil *8th* law, with which, in that kind, ours somewhat agrees, that all lesser isles are reckoned part of some adjoining continent, if both under the same empire) and this by reason of the equal distance from both. To decide it, they tried if it would endure venomous beasts, which is certainly denied of *Ireland*; and, finding that it did, ^a adjudged it to our *Britain*. The other isles here spoken of, lie further north by *Scotland*, and are to it subject.

§. *The scarleſt British priests under an aged oak.*

He means the *Druids*; because they are indeed, as he calls them, *British* priests, and that this island was of old, their mother; whence, as from a seminary, *Gaul* was furnished with their learning. Permit me some space more largely to satisfy you in their name, *profession*, *sacrifice*, *places of assembling*; and lastly, *subversion*. The name of *Druids* hath been drawn from *δρῦς*, i. e. *an oak*; because of their continual ¹ using that tree as superstitiously hallowed; according as they are called also *αερινὸς* ² or *αερινίδης*, which likewise, in *Greek*, is *old oaks*. To this, compare the *British* word *deru*, of the same signification, and, the origi-

nal here sought for, will seem surely found. But one, ¹ that derives all from *Dutch*, and prodigiously supposes, that the first tongue spoken, makes them so filied from *troutwits*, i. e. *truly wise*; so expressing their nature in their name. Nor is this without good reason of conjecture (if the ground were true) seeing that their likein proportion, among the *Jews* and *Gentiles* were called (until *Pythagoras's* time) *wife men*,² and afterward by him turned into the name of philosophers, i. e. *lovers of wisdom*; and perhaps the old *Dutch* was, as some learned think, communicated to *Gaul*, and from thence, hither; the conjecture being somewhat aided in that attribute which they have in *Pomponius*,³ calling them *masters of wisdom*. A late ⁴ great scholar draws it from *trutin*, in an old *Dutch* copy of the gospel, signifying, as he says, *God*; which might be given them by *hyperbole* of superstitious reverence; nay, we see that it is justifiable by holy writ, so to call great magistrates and judges; as they were among the people. But that word *trutin*, or *truchin*, in the old angelical salutation, *Zachary's* song, and *Simeon's*, published by *Vulcan*, is always *lord*; as this, *Et tu truchin got Israel*, i. e. *Blessed be the Lord God of Israel*; and so in the *Saxon* ten commandments, *Ulc com Drihten 7 in Eoð, i. e. I am the Lord thy God*. These are the etymologies which favour of any judgment. To speak of king *Druis*, or *Sarron*, which that ⁵ *Dominican* friar hath cozened vulgar credulity withal, and thence fetch their name, according to doctor *White of Basingstoke*, were with him to suffer, and, at once, offer imposture. Of them all, I incline to the first, seeing it meets in both tongues, *Greek* and *British*; and somewhat the rather too, because antiquity did crown their infernal deities (and from *Dis*, if you trust *Caesar*, the *Gauls*, and by consequence, our *Britons*, upon tradition of these priests, drew their descent) with oak; as ⁶ *Sophocles* hath it of *Hecate*, and ⁷ *Catullus* of the three destinies. Neither will I desire you to spend conceit upon examination of that supposition, which makes the name ⁸ corrupted from *Duccergluis*, which in *Scotish*, were such as had a holy charge committed to them; whereupon, perhaps, *Bale* says, *S. Columban* was the chief of the *Druids*; I reckon that among the infinite fables and gross absurdities, which its author hath, without judgment, stuffed himself withal. For their *profession*, it was both of learning profane, and holy (I speak in all, applying my words to their times. They sat as judges, and determined all causes emergent, civil and criminal, subjecting the disobedient, and such as made default, to interdicts and censures, prohibiting them from sacred assemblies, taking away their capacities in honourable offices, and so disabling them, that

¹ Commentar. §.

² Walsingham, in Ed. II.

verb. fig. l. 99.

³ Topograph. Hiern. dist. 2. cap. 15.

quorum gestis fab.

⁴ Goropius Gallus, §.

quod Hebraei in usu ut deru

⁵ Pythagorae, nec Druidum discipulis reſtrayon fontem is magisterum sui erat.

cap. 2.

⁶ Paul. Merula cosmog. part. 2. lib. 3. cap. 11.

(ille Annianus fudicius) Chaldaic. antiquitat. §.

in conſeſtancia.

⁷ In Piſſerbu. apud Scholiaſt. Apollonii uui primum didici a Joſephoe Scaligeru

⁸ De nuptiis Pelei & Thetidis. §.

⁹ Hic corpus tremulum, &c. ubi vulgus deſt illa, quae, antiquorum codicum

ſide, eſt vera lectio, mi Scalig.

¹ Camden. in Inſulit.

² Plin. hiſt. nat. 16. cap. 44.

³ Plin. hiſt. nat. 16. cap. 44.

⁴ Plin. hiſt. nat. 16. cap. 44.

⁵ Praefat. ad leg. Aluredi Saxonie.

⁶ Ulpian ff. de judiciis l. 9. &

⁷ Diodor. Sicul. de anti-

⁸ Capito de art. cabalistic. l. 3.

⁹ Geograph. p. 3.

¹⁰ Berosus

¹¹ Berosus

¹² Berosus

¹³ Berosus

¹⁴ Berosus

¹⁵ Berosus

¹⁶ Berosus

¹⁷ Berosus

¹⁸ Berosus

¹⁹ Berosus

²⁰ Berosus

(as our now out-laws, excommunicates, and attainted persons) they might not commence suit against any man. In a multitude of verses, they delivered what they taught, not suffering it to be committed to writing, so imitating both *Cabalists*, *Pythagoreans*, and ancient Christians; but used in other private and publick business Greek letters, as *Caesar's* copies have; but here-of see more to the tenth song. Their more private and sacred learning consisted in divinity and philosophy (see somewhat of that, to the first song) which was such, that although I think you may truly say with *Origen*, "that, before our Saviour's time, *Britain* acknowledged not one true God, yet it came as near to what they should have done, or rather nearer, than most of other, either *Greek* or *Roman*, as by their positions in *Caesar*, *Strabo*, *Lucan*, and the like discoursing of them, you may be satisfied. For although *Apollo*, *Mars*, and *Mercury*, were worshipped among the vulgar *Gauls*, yet it appears, that the *Druids* invocation, was to one * all-healing or all-faving power. In morality, their instructions were so perswasive, and themselves of such reverence, that the most fiery rage of *Mars* kindled among the people, was by their grave councils † often quenched. Out of *Pliny*, receive their form of ritual sacrifice, (here described by the author) thus: In such gloomy shadows, as they most usually for contemplation retired their ascending thoughts into, after exact search, finding an oak, whereon a mistletoe grew, on the sixth day of the moon (above all other times) in which, was the beginning of their year, they religiously, and with invocation, brought with them to it, a ceremonial banquet, materials for sacrifice, with two white bulls, filleted on the horns, all which they placed under the oak. One of them, honoured with that function, clothed all in white, climbs the tree, and with a golden knife, or scythe, cuts the mistletoe, which they solemnly wrapped in one of their white garments. Then did they sacrifice the bulls, earnestly calling on the *omnia sanantem*, all healing deity, to make it prosperous and happy on whomsoever they shall bestow it, and accounted it both preservative against all poisons, and a remedy against barrenness. If I should imagine by this all-healing deity, to be meant *Apollo*, whom they worshipped under name of *Belin* (as I tell you to the eighth song) my conjecture were every way receivable; seeing that *Apollo* ‡ had both among *Greeks* and *Latins*, the divine titles of αλεξικακος, λημις, medicus, physician; and to him the invocation was ἰα Πάτερ, heal Apollo, all concurring in the same proof; but also if they had (as probability is enough to conjecture it) an altar inscribed for this devotion, and used *Greek* letters (which, to the next song, shall be somewhat examined) I could well think the dedication thus conceived.

* BEΛΙΝΙ

ΤΩΙ.

ΠΑΝΑΚΕΙ.

To all healing Apollo.

Ο R,

BEΛΙΝΩΙ. ΘΕΩ

To God Belin.

Which, very probably, was meant by some, making in *Latin* termination, and nearer *Apollo's* name.

DEO

ABELLIONI.

To God Abellio.

As, an inscription, in *Gaul*, to abiding memory committed by that most noble *Joseph Scaliger*, is read; And perhaps some relics or allusion to this name is in that

DEO

SANCTO BELA-
TUCADRO—

yet remaining in ^b *Cumberland*. Nor is it strange that *Apollo's* name should be thus far of ancient time, before communication of religion betwixt these northern parts and the learned *Gentiles*, seeing that *Caesar* affirms him for one of their deities; and, long before that, *Abarris* (about the beginning of the ^c *olympiads*) an *Hyperborean* is recorded for ^d *Apollo's* priest among the utmost *Scythians*, being further from *Hellenism* than our *British*. But I return to the mistle: Hereto hath some referred ^e that which the *Sybil* counselled *Aeneas* to carry with him to *Proserpine*;

—latet arbore opaca

Aureus, & foliis, & lento vimine ramus,
*Junoni infernae dictus sacer: hunc tegit omnis**Lucus, & obscuris claudunt convallibus umbræ.*

Which may as well be so applied, as to ^f chymistry; seeing it agrees also with what I spoke before of *Dis*, and that *Virgil* expressly compares it to the mistle,

—quod non sua seminat arbor.

—which grows not of itself.

for it springs out of some particular nature of the oaken stem, whereupon it is called by an old poet *δρυϊδανς*, *fecat of the oak* †; and although it be not ordinarily found upon oaks, yet, that oft-times it is, any apothecary can tell, which

* Cael. Rhodigin. antiq. lect. 10. cap. 1.
geograph. 2.

† Macrobi. Saturn. cap. 17.

* Ausoniarum. lect. 1. cap. 9.

* Claud. ibid.

* Virgil. Aeneid. 6. Petr. Crinit. hist. poet. 6. cap. 10.

soph. 10.

* Ad Jechezkel. 4.

* Plin. hist. nat. 16. cap. 44.

* Strab.

* ESALUTARIS APOLLO, in num. apud Goltzius. in Thef.

* Hippocrat. ap. Suid. in Abaz.

* Malchus vit. Pythagoræ.

† Braschell in ligno vitæ.

† Ion apud Athenæum dīpo-

preferrevh it for medicine, as the antients used to make lime of it to catch birds; of which ⁸ *Argentarius* hath an admonitory epigram to a black-bird, that she ⁹ should not sing upon the oak, because that

— τῆς λευκῆς πίπῃ τῷ ἀράκῳ ἱστῖς
— *bred lime to catch her,*

but on the vine, dedicated to *Bacchus*, a great favourite of singers. Upon this *Druidian* custom, ^h some have grounded that unto this day used in *France*, where the younger country fellows, about new year's tide in every village give the wish of good fortune at the inhabitants doors, with this acclamation, *au guy l'an neuf*, to the mistle this new year, which, as I remember, in *Rablais*, is read all one word, for the same purpose. Whether this had any community with the institution of that ¹ temple ἱερουργεῖν νέμεσ, of mistle fortune in *Antium*, or that *Ovid* alluded to it in that verse, commonly cited out of him,

At (some read *ad*) *viscum Druidae, viscum clamarare solebant;*

To the mistle the Druids used to cry.

I cannot assure you, yet it is enough likely. But I see a custom in some parts among us, in our language (nor is the digression too faulty) the same in effect; I mean the yearly *was-haile* in the country on the vigil of the new year, which had it's beginning, as some ^k say, from that of *Ronix* (daughter to *Hengist*) her drinking to *Vortigern*, by these words *louerd king was-haile, lord king a health*: he answering her by direction of an interpreter, *drinc-haile, drink the health*, and ^l then,

*Ruffe hire and fette hire adoun and glad dyanke hire hyl
And that was tho in this land the best was-hail
As in language of Maxorne that me might curre iluite
And so wel be paith the fole about, that he is not put bozruet.*

Afterward it appears that *was-haile* and *drinc-haile*, were the usual phrases of quaffing among the *English*, as we see in ^m *Thomas de la Moore*, and before him that old ⁿ *Havillan*, thus:

*Ecce vagante cifo dissentio gusture was-haile
Ingeminant was-haile* —

But I rather conjecture it a usual ceremony among the *Saxons* before *Hengist*, as a note of health-wishing (and so perhaps you might make it *with-haile*) which was expresse among other nations in that form of drinking to the health of their mistresses and friends,

Bene; vos, bene nos, bene te, bene me, bene
Stephanium. (nostram etiam)

in ^o *Plautus*, and infinite other testimonies of that nature (in him, *Martialis*, *Ovid*, *Horace*,

and such more) agreeing nearly with the fashion now used; we calling it a *health*, as ^p they did also in direct terms; Which, with an idol called *Heil*, antiently worshipped, at *Cerne* in ^q *Dorsetshire*, by the *English Saxons*, in name expresses both the ceremony of drinking, and the new year's acclamation (whereto in some parts of this kingdom is joined also solemnity of drinking out of a cup, ritually composed, decked, and filled with country liquor) just as much and as the same which that *all-healing Deity*, or *all-helping* medicine did among the *Druids*. You may to all this add, that, as an earnest of good luck to follow the new year beginning, it was ^r usual among the *Romans*, as with us, and I think, in all *Europe*, at this day is, to greet each other with auspicious gifts. But hereof you say I unfitly expatiate: I omit therefore their sacrificing of human bodies, and such like, and come to the places of their assembly. This was about *Chartres* in *Gaul*, as *Caesar* tells us; *Paul Merula* (for affinity of name) imagines it to be *Dreux*, some eight miles on this side *Chartres*. And peradventure the *Galatians* publick council, called *Drymenetum*, had hence original. The *British* Druids took this isle of *Anglesey* (then well stored with thick woods, and religious groves, inso much that it was called *insul dowlil*, the dark isle) for their chief residence; as in the *Roman* ^s story of *Paulinus* and *Agricola*'s adventuring on it, is delivered. For their *subversion*; Under *Augustus* and *Tiberius* they were prohibited ^t *Rome*, and *Claudius* endeavoured it in ^u *Gaul*; yet in the succeeding emperor's times there were of them left, as appears in *Lampridius* and *Vopiscus*, mentioning them in their lives; and, long since that, *Procopius*, ^v writing under *Justinian* above 400 years after Christ, affirms, that then the *Gauls* used sacrifices of human flesh, which was a part of *Druidian* doctrine. If I should upon testimony ^w of, I know not what, *Veremund Campbell*, and the *Irish Cornill*, tell you that some 615 years before Christ, *Finan* king of *Scotland* first gave them the isle, or that king *Crasblint*, in *Dioclesian's* persecution, turned their religion into christianism, and made *Amphibalus* first bishop of *Sodor*, I should fabulously abuse time, as they have ignorantly mistook that *Isle of Man* for this: Or to speak of the supposed, their *Wattenfuss*, i. e. a pentagonal figure, engraven with *TTEIA* or *Tynus*, (it is the same, in fashion, with the victorious seal of *Antiochus Soter*, ^x being admonished by *Alexander* in a dream, to take it) which in *Germany* they reckon for a preservative against hobgoblins, were but to be indulgent to old wives traditions. Only thus much for a corollary, I will note to you; ^y *Conrad Celles* observes, to be in an abbey at the foot of *Vichtelberg-hill*, near *Voitsland*, six statues, of stone,

⁸ Antholog. 4. cap. 5.

lecl. 15. cap. 14.

Archibute. lib. 2.

eadem comœdia.

& vit. Agricola.

⁹ De bell. Gothic. 8.

apud Agrippam in 3. de oculis philosoph. cap. 31.

de Hieronyma Silva.

^h Jo. Goropius Gallic. 1. & alii.

ⁱ Galfred. Monumeth. lib. 3. cap. 1.

^j Subintelligit *ſeray*, aut quid simile.

^k Camdenus.

^l Sueron. lib. 5. cap. 24. & Plin. hist. nat. 30. cap. 1.

^m Heclor. Boet. Scotor. hist. 2. & 6.

ⁿ Lucian. 1. 7. 77. *ſymposium* & *ſymposium*.

^o Apud 1. Reuchlinum in 3. de arte cabalifica.

^p Plutarch. problem. Rom. 3. Coelius Rhodigin. antiq.

^q Rob. Glocestren.

^r In Strabo.

^s Propino tibi salutem plenius faucibus. Plaut.

^t Strab. Geograph. 46.

^u Sener. in Apocoloc. 8. Sueron. ubi supra.

^v Tacit. annal. 14.

^w Tract.

set in the church wall, some seven foot, every one tall, bare head and foot, cloaked and hooded, with a bag, a book, a staff, a beard hanging to his middle, and spreading a mustachio, an austere look and eyes fixed on the earth; which he conjectures to be images of them. Upon mistaking of *Strabo*, and applying what he saith in general, and bracelets and gold chains of the *Gauls*, to the *Druids*, I once thought that *Conrad* had been deceived; but I can now upon better advice incline to his judgment.

§. Which with my prince's court I sometimes pleas'd to grace.

For, as in *Southwales*, *Caermarthen*, and afterward *Dineowr*; in *Powis*, *Shrewsbury*, and then *Mathraval*; so in *Northwales* was *Aber-fraw*, in *Anglesey*, chief place of the prince's residence.

Least (by reason of the composition in print) some pages should have been idle, and because also here is so much of the *Welsh* story, I inserted this chronology of the kings and princes of *Wales*, from *Arthur*, until the end of the *British* blood in them.

Of Christ.

D.XVI. * *Arthur* succeeded his father *Uther Pendragon*: Of his death, see to the third song.

DXLII. *Constantine*, son to *Cador*, duke of *Cornwall*, (understand governor or lord lieutenant; for neither in those times, nor long after, was any such title particularly honorary;) he lies buried at *Stonehenge*.

D.XLV. *Aurelius Conan*.

D.LXXVIII. . . . *Vortipor*.

D.LXXXI. *Malgo*.

D.LXXXVI. . . . *Catheric*. In his time the *Britons* had much adverse fortune in war with the *Saxons*; and then, most of all, made that secession into *Wales* and *Cornwall*, yet in name retaining heretofore remembrance.

About DC. *Cadwan*.

About DC.XXX. . . *Cadwalin* or *Cadwallo*: the *Britons* as in token of his powerful resistance and dominion against the *Saxons*, put † him, being dead, into a brazen horse, and set it on the top of the west gate of *London*; it seems he means *Ludgate*.

DC.LXXVI. . . . *Cadwalader*, son to *Cadwallo*. Of him and his name, see before. Nor think I the *British* and *English* chronicles, concerning him, reconcilable. In him the chief monarchy and glory of the *British* failed.

DC.LXXXVIII. . . *Ivor*, son to *Alan*, king of *Armorick Britain*. This *Ivor* they make (but I examine it not now) *Ine*, king of *West-Saxons* in our monks; that is, he which began the *Peter-pence* to *Rome*.

D.CCX. *Roderick Molwinoe*, son of *Edwal*; ~~which~~.

D.CCLV. *Conan Tindaethwy*, son of *Roderick*.

Near D.CCCXX. . . *Mervin Urich*, in right of his wife *Eyslbt*, daughter and heir to *Roderick*.

D.CCCXLIII. . . . *Roderick Mawr*, son to *Mervin* and *Eyslbt*. Among his sons was the tripartite division of *Wales* (as to the seventh song) into *Powis*, *North*, and *South Wales*.

D.CCCLXXVII. . . *Anarawd*, son to *Roderick*.

D.CCCCXIII. . . . *Edward Voel*, son of *Anarawd*.

D.CCCCXL. *Howel Dba*, cousin-german to *Edwal*, having before the principality of *South Wales* and *Powis*. This he whose laws are so famous and enquired of in *rot. claus. Wall.* 9 Ed. I. in the *Tower*.

D.CCCCXLVIII. . *Jefaf* and *Jago*, sons of *Edward Voel*.

DCCCC.LXXXII. . *Howel ap Jefaf*.

DCCCCXXCIV. . . *Cadwallo* ap *Jefaf*.

D.CCCCXXCVI. . . *Meredith* ap *Owen*.

D.CCCCXCII. . . . *Edwal* ap *Meiric*.

Clj.III. *AEdan* ap *Blegored*.

Clj.XV. *Llewelin* ap *Sitgylbt*.

Clj.XXI. *Jago* ap *Edwal* ap *Meyric*.

Clj.XXXVII. . . . *Gruffyth* ap *Llewelin*.

Clj.LXI. *Blethin* and *Rhywallon* ap *Convin*.

Clj.LXXIII. . . . *Trabarn* ap *Caradoc*.

Clj.LXXVIII. . . . *Gruffyth* ap *Conan*. He reformed the *Welsh* poets and minstrels, and brought over others out of *Ireland* to instruct the *Welsh*, as to the fourth song.

Clj.CXXXVII. . . *Owen Gwineth* ap *Gruffyth* ap *Conan*.

* Pref. in descript. Wall.

† I will not justify the times of this *Arthur*, nor the rest, before *Cadwalader*, so discordant are our chronologers; nor had I time to examine, nor think that any man hath sufficient means to rectify them.

† The Roou.

† This report is, as the *British*

- C13.C.LXIX. -- *David ap Owen Gwineth*. In his time, *Mador*, his brother, discovered part of the *West Indies*.
- C13.C.XCIV. -- *Llewelin ap Iorwerth ap Owen Gwineth*.
- C13.CC.XL. -- *David ap Llewelin ap Iorwerth*.
- C13.CC.XLVI. -- *Llewelin ap Gruffyth ap Llewelin ap Iorwerth*; the last prince of *Wales* of the *British* blood.
- C13.CCLXXXII. *Edw. I.* conquered *Wales*, and got the principality, *Llewelin* then slain; and and since that (*Hen. III.* before gave it also to his son prince *Edward*) it hath been in the eldest sons, and heirs apparent of the *English* crown.

But note, that after the division among *Roderick Mawr*'s sons, the principality was chiefly in *North Wales*, and the rest as tributary to the prince of that part: and from him, as supreme king of *Wales*, are all these deductions of time and persons, until this last *Llewelin*.

Illustrations on the tenth song.

Returning into the land, the muse leads you about *Denbigh* and *Flint*, most northern and maritime thires of *Wales*; which conclude these seven last books dedicated to the glory of that third part of *Great Britain*.

§. Prophetick Merlin sat, when to the British king.

In the first declining state of the *British* empire, (to explain the author in this of *Merlin*) *Vortigern*, by advice of his magicians, after divers unfortunate successes in war, resolved to erect a strong fort in *Snowdon-hills* (not far from *Conway*'s head in the edge of *Mersoneth*) which might be as his last and surest refuge, against the increasing power of the *English*. Masters were appointed, and the work begun; but what they built in the day, was always swallowed up in the earth, next night. The king asks counsel of his magicians, touching this prodigy: They advise, that he must find out a child which had no father, and with his blood sprinkle the stones and mortar, and that then the castle would stand as on a firm foundation. Search was made, and in *Caermarthen* (as you have it to the fifth song) was *Merlin Ambrose* found; he, being hither brought to the king, slighted that pretended skill of those magicians as palliated ignorance; and with confidence of of a more knowing spirit, undertakes to shew the true cause of that amazing ruin of the stone work; tells them that in the earth was a great water, which could endure continuance of no heavy super-struction. The work-men dig-

ged to discover the truth, and found it so. He then beseeches the king to cause them to make further inquisition, and affirms, that in the bottom of it were two sleeping dragons: which proved so likewise, the one white, the other red; the white he interpreted for the *Saxons*, the red for the *Britons*: and upon this event here in *Dinas Emrys*, as they call it, began he those prophecies to *Vortigern*, which are common in the *British* story. Hence questionless was that fiction of the muses best pupil, the noble *Spencer*¹, in supposing *Merlin* usually to visit his old *Timon*, whose dwelling he places

—low in a valley green

*Under the foot of Rauran mossie bore
From whence the river Dee as silver clean,
His tumbling billows rolls with gentle rore.*

For this *Rauran vaur* hill is there by in *Merioneth*: but observe withal, the difference of the *Merlins*, *Ambrose* and *Sylvestre*, which is before to the fourth song; and permit it, only as poetical, that he makes king *Arthur* and this *Merlin* of one time. These prophecies were by *Geoffrey ap Arthur*, at request of *Alexander* bishop of *Lincoln* under *Hen. I.* turned into *Latin*, and some ccc years since had interpretation bestowed on them by a *German* doctor, one *Alanus de insulis*, who never before, but twice since that happy inauguration and mighty increase of dominion in our present sovereign hath been imprinted. It is certain that oft-times they may be directly and without constraint applied to some event of succeeding time; as that which we have before to the fifth song of *Caerleon*, and this, *the Isle shall again be named after Brute*; which is now seen by a publick edict, and in some of his majesty's present coins, and with more such; Yet seeing learned^m men account him but a professor of unjustifiable magick, and that all prophecies either fall true, or else are among the affects of such vanity perpetually expected, and that of later time the council of *Trent* have by their expurgatories prohibited it, I should abuse you, if I endeavoured to persuade your belief to conceit of a true fore-knowledge in him.

§. And the delicious Vale thus mildly doth bespeak.

If your conceit yet see not the purpose of this fiction, then thus take it. This vale of *Cluid* (for so is the *English* of *Dyffyn Clwyd*) extended from the middle of *Denbighshire* to the sea, about eighteen miles long, and some five in breadth, having those three excellencies, a fertile soil, healthful air, and pleasant seat for habitation, washed through the middle with this river, and encompassed on the east, west, and south, with high mountains, freely receives the wholesome blasts of the north-wind (much accounted of among builders and geonicks for immision of pure air) coming in from that part

¹ Ambroses Bury. Itinerar. 2. cap. 3. cap. 16. alii.

² Fairy Queen, lib. 3. Cant. 9. Stanz. 4.

³ Wier. de practiciis demon. 2.

which lies open to the sea; whercupon the muse very properly makes the vale here *Boreas* his beloved; and in respect of his violence against the waters, supposeth him jealous of *Neptune*; whose ravishing waves in that troubled *Irish* sea, and the depressed state of the valley warrant it. And for that of *Molvennil's* love to the river, wantonly running by him; I know your conceit cannot but apprehend it.

§. *That naturally remote six British miles from sea.*

It is in the parish of *Kilken* in *Flintshire*, where it ebbs^a and floweth in direct opposite times to the sea, as the author describes; they call it ^b *Finon Lennu*: Such a one is there about a furlong from the *Severn* sea, by *Newton* in ^c *Glamorganshire*, and another ebbing and flowing (but with the common course of the moon, ascending or setting) by ^d *Dinevor* in *Caermarthenshire*. Nor think I any reasons more difficult to be given, than those which are most especially hidden, and most frequently strange in particular qualities of floods, wells, and springs; in which (before all other) nature seems as if she had, for man's wonder, affected a not intelligible variety, so different, so remote from conceit of most piercing wits; and such unlooked for operations both of their first and second qualities (to use the school phrase of them) are in every chronographer, naturalist, and historian.

§. *Yet to the sacred fount of Winifred gives place.*

At *Habywell*, a maritime village, near *Basingwerke* in *Flint*, is this *Winifred's* well, whose sweetness in the moss, wholsomeness for bath, and other such useful qualities, have been referred to her martyrdom in this place. But *D. Powel* upon *Girald*, in effect thus: *Hen. II.* in his first *Welsh* expedition fortified the castle of *Basingwerke*, and near by, made a cell for *Templers*, which continued there until their dissolution under ^e *Edward II.* and was after converted to a nest of lubberly monks, whose superstitious honouring her, more than truth, caused this dedication of the fountain; so much to their profit (in a kind of merchandize then, too shamefully in request) that they had large guerdons (it belonging to the cell) of those, which had there any medicine, beside increasing rents which accrued to them yearly out of pardons to such as came thither in solemn pilgrimage. This title of exaction they purchased of *P.P. Martin V.* under *Hen. V.* and added more such gaining pretences to themselves in time of *Hen. VII.* by like authority; nor, until the more clear light of the gospel, yet continuing its comfortable beams among us, dissipated those foggy mists of error and inoak-selling imposture, ended these collected revenues. The author follows the legend; but observe times compared, and you shall find no mention of

this well, and the healthful operations of it, until long after the supposed time of *S. Winifred's* martyrdom.

§. *That figure of the cross of which it takes the name.*

Depressed among mountains this valley expresses the former of a cross, and so is called the *cross vale*, and in *British* than *gwest*.

§. *To whom eight lesser kings with homage did resort.*

Upon comparing our stories, I find them to be *Kenneth* of *Scotland*, *Malcolm* of *Cumberland*, *Malcuze*, king of the isles (whom *Malmfbury* gives only the name of *Archpirat*) *Donald*, *Siffreth*, *Howel*, *Jago*, and *Inchitbill* kings of *Wales*. All these, he (thus touched with imperious affection of glory) sitting at the stern, compelled to row him over *Dee*; his greatness as well in fame as truth, daily at this time increasing, caused multitudes of aliens, to admire and visit his court, as a place honoured above all other by this so mighty and worthy a prince; and through that abundant confluence, such vitious courses followed by example, that, even now was the age, when first the more simple and frugal natures of the *English*, grew infected with what (in some part) yet we languish. For, before his time, the *Angles* hither traduced, being *homines integri*, † and using, *naturali simplicitate sua defensare, aliena non mirari: honest men, by simplicity of nature, looking only to their own, neglecting others*, did now learn from the stranger *Saxons* an uncivil kind of fierceness, of the *Flemings* effeminacy, of the *Danes* drunkenness, and such other; which so increased, that, for amendment of the last, the king was driven to constitute quantities in quaffing bowls by little pins of mettles, set at certain distances, beyond which, none durst swallow in that provocation of good fellowship.

§. *As thou, the queen of isles, great Britain—*

Both for excellence in soil and air, as also for large continent she hath this title. And although in antientest time of the *Greeks* (that hath any story or chorography) *Sardinia* was accounted the ¹ greatest isle, and by some *Sicily*, as the old verses of the ^m *Seven* tell us, and that by ⁿ *Ptolemy*, the *East-Indian Taproban*, now called *Sumatra*, had pre-heminence of quantity before this of ours; yet certainly, by comparison of that with this, either according to the measure took of it by *Onesicritus* * upon *Alexander's* commandment, or what later time teaches us, we cannot but affirm with the author here in substance, that

ἡδὴτι ἄλλα
Νήσιος ὁ πᾶσι Βρετανίῳ ἰσοπαρεῖται.

No other isle is equal to Britain.

^a Hum. Lluidd, descript.

1. cap. 10.
Atrium.

^b Ed. II.

^c Geograph. lib. 7. cap. 6.

^d Powel. ad Girald. Itinerar. 1. cap. 10.

^e Malmesbur.

^f Scylax. Caryand. 1. edit. per D. Hoeckhelium.

^g Solin. polyhist. cap. 66.

^h Stradling ap. Camd.

ⁱ Girald. itinerar.

^k Eustath. ad Dionys.

as long since, *Dionysius Afer* of our Britain, which hath given cause to call it another world; as the attributes of it in *Virgil*, *Horace*, *Claudian*, and others, justify.

§. And learning long with us ere 'twas with them in use.

For the *Druids*, being in profession very proportionate in many things to *Cabalistical* and *Pythagorean* doctrine, may well be supposed much antienter than any that had note of learning among the *Romans*; who¹ before *Livius Salinator*, and *Naevius*, *Ennius*, *Pacuvius*, *Accius*, and others, not much preceding *Caesar*, can scarce shew steps of poetry, nor before *Fabius Pictor*, *Valerius Antias*, and some such now left only in their names (although, by pretence of *Annus*, there be a piece of *Pictor* published) can produce the title of a story; whereas we have² some that make that supposed eldest historian (of the *Gentiles*) extant, *Dares Phrygius*, translated by *Cornelius Nepos*, and dedicated to *Salust*, to have lived here, but indeed upon no such warrant, as I dare trust.

§. Our Geoffrey Monmouth first our Brutus to devise.

It was so laid to *Geoffrey's* charge (he was bishop of *St. Asaph*, under king *Stephen*) by *John of Wethamsted*, abbot of *St. Albans*, *William Petit*, called *William of Newborough*, and some others. But plainly (let the rest of his story, and the particulars of *Brute* be as they can) the name of *Brute* was long before him in *Welsh* (out of which his story was partly translated) and *Latin* testimonies of the *Britons*, as I have, for the author, more largely spoken, to the first song. And (a little to continue my first justification, for this time) why may not we as well think that many stories and relations, anciently written here, have been by the *Picts*, *Scots*, *Romans*, *Danes*, *Saxons*, and *Normans*, devoured up from posterity; which perhaps, had they been left to us, would have ended this controversy? Shall we doubt of what *Livy*, *Polybius*, *Halicarnassensis*, *Plutarch*, *Strabo*, and many others have had out of *Fabius*, *Antias*, *Cereas*, *Solyus*, *Ephorus*, *Theopompus*, *Cato*, *Quadrarius*, with infinite other, now lost, writers, because we see not the self authors? No. Time hath rancked more precious things, and even those super-excellent books, wherein that incomparable *Solomon* wrote from the cedar to the hyssop, were (upon fear of the facile multitudes too much respecting natural causes in them divinely handled) by king *Hezekiah*, suppressed from succeeding ages, if my³ authority deceive not. So that the loss in this, and all kinds, to the commonwealth of letters, hath been so grievous and irreparable, that we may well imagine, how error of conceit

in some, envy in others, and hostile invasions; hath bereft us of many monuments most precious in all sorts of literature, if we now enjoyed their instructing use; And to conclude, the antiquities of these original ages are like those of *Rome* between it built and burnt by the *Gauls*; *Cum vetustate nimia obscurae, velut quae* (as⁴ *Livy* says) *magno ex intervallo loci vix cernuntur: tum quod perraræ, per eadem tempora literarum fuisse, una custodia fidelis memoriae rerum gestarum; & quod etiam, si quæ in commentariis pontificum aliisque publicis privatiq[ue] erant monumentis, incensa urbe, pleraque interiere*; But all this in effect, the muse tells you in the sixth canto.

§. To letters never would their mysteries commit.

What they taught their scholars for matter of law, heathenish religion, and such learning as they here were presidents of, was delivered⁵ only by word of mouth; and, least memory unused might so fail, they permitted not commission of their lectures and instructions, to the custody of writing; but delivered all in a multitude of verses and *Pythagorean* precepts, exactly imitating the *Cabalists*; which, until of late time, wrote not, but taught and learned by mouth, and diligent hearing of their *Rabbins*. In other matters, private and publick, (so is *Caesar's* assertion) *Græcis literis utuntur, they used Greek letters*, which hath made some think that they wrote *Greek*. But be not easily thereto persuaded. Perhaps they might use *Greek* characters, seeing that those which the *Greeks* then had, and now use, were at first received from⁶ strangers, and as likely from the *Druids* as from any other; for it is sufficiently justifiable out of old coins, inscriptions, and express⁷ assertion, that the ancient character among the *Greeks*, was almost the same with that which is now the *Latins*. But thence to collect, that therefore they wrote or spake *Greek*, is as if you should affirm the *Syriack* testament to be *Hebrew*, because published in *Hebrew* letters, or some *Latin* treatises, *Saxon*, because in that character; or that the *Saxons* wrote *Irish*, because they used the⁸ *Irish* form of writing; or that those books which are published in *Dutch* by some *Jews*, in a special kind of *Hebrew* letter, should also be of the same tongue. Observe but this passage in *Caesar*: He sends by a *Gaul* (allured to this use against his country by large rewards) a letter to *Q. Cicero*, being then besieged about⁹ where now is *Tournay*, & *Græcis conscripsit literis, ne intercepta epistola nostra* (saith he of himself) *ab hostibus consilia cognoscantur; wrote it in Greek, lest the enemy might, by intercepting the letters, discover his design*. To what purpose did he thus, if the *Gauls*, or their statemen the *Druids*, understood *Greek*? I

¹ V. Liv. decad. 1. lib. 6.

² Bal. centur. 1.

³ In Zerror Hamor apud Munst. ad Exod. xv.

⁴ Dec. 1. lib. 6.

⁵ Caesar, de Bell. Gallic. lib. 6.

⁶ Varro de ling. Lat. 7.

⁷ Plin. hist. nat. 7. cap. 14. & si placet, videas An-

nanios illos, Archilocho, de temporibus, & Xenophontem in equivocis.

⁸ Camd. in Hibernia, & per Græcis literis in ara

Utrius in consilio Rheine & Germaniae, apud Tacitum, Liplius characteres solummodo intelligit.

⁹ Nervi, de bello

Gallie. 5.

know what he writes of those tables of account found in the now *Switzerland*, but shall not soon believe that they had much more Greek in them, than the character. If you object ⁴ *Strabo* his assurance, that the *Gauls* (for as long as I speak of them in general in this kind, I will include our *Druids*, as sufficient reason is elsewhere given) were grown such lovers of that tongue, ὅτι καὶ τὰ συμβόλια ἔγραψαν, that they wrote their instruments of contract, in Greek. It is soon answered, that he speaks only of those about *Marfeilles*, which was, and is well known to all men, to have been a colony of *Phocians*, out of the now *Natolia*, (which were *Greeks*) by appointment of fate, arriving at the mouth of *Rhone*, about time of *Tarquin the proud*; where *Protiis*, one of their chief leaders, entertained by *Nannus* king of that coast, was chosen (according to their custom) in a banquet by *Gyptis* the king's daughter for her husband: Hereto success grew so fortunate, that honourable respect on both sides, joined with imitation of *Greek* civility, (after this city built near their arrival) it seemed, as my author says, as if *Gaul* had been turned into *Greece*, rather than *Greece* to have travelled into *Gaul*. Wonder not then why, about *Marfeilles*, *Greek* was so respected, nor why in the *Roman-French*, now such *bel-lenisms* are. Here you see apparent original of it. Yet conclude, upon the former reasons, that the *Druids* and *Gauls* used a peculiar tongue, and very likely the same with the now *Welsh*, as most learned *Camden* hath even demonstrated; although I know some great scholars there are, which still suspend their judgment, and make it a doubt, as ever things of such antiquity will be. But (if you will) add here to that of the famous and great lawyer ¹ *Hotoman*, who presumes that the word *Graecis*, in *Caesar's* text, is crept in by ignorance of transcribers, as he well might, seeing those commentaries, titled with name of *J. Caesar*, commonly published, and in divers mss. with *Julius Celsus*, are very unperfect, now and then abrupt, different in stile, and so variable in their own form, that it hath been much feared by that great ² critic *Lipsius*, lest some more impolite hand hath sowed many patches of base cloth into that more rich web, as his own metaphor expresses it. And if those characters which are in the pillars at *T-Voclas* in *Denbighshire*, are of the *Druids*, as some imagine (yet seeming very strange and uncouth) then might you more confidently concur in opinion with *Hotoman*. In sum, I know that *Graecis literis* may be taken as well for the language (as in ³ *Juslin* I remember, and elsewhere) as for the character; but here I can never think it to be understood in any but the last sense, although you admit *Caesar's* copy to be therein not interpolated. It is very justifiable which the author here implies, by slighting *Caesar's* autho-

rity in *British* originals, in respect that he never came further into the isle than a little beyond *Thames* towards ¹ *Berkshire*; although some of ours idly talk of his making the *Bath*, and being at *Chester*, as the *Scotish* historians most senselessly of their *Julius Hoff*, built by him, which others refer ² to *Vespasian*. Some affirm it a temple ³ of God *Terminus*; whereas it seems expressly to be built by *Carausius*, in time of *Dioclesian*, if *Nennius* deceive us not. But, this out of my way.

Illustrations on the eleventh song.

Now are you newly, out of *Wales*, returned into *England*; and, for convenience of situation, imitating therein the ordinary course of chorography, the first shire eastward, (from *Denbigh* and *Fliint*, last sung by the muse) *Cheshire*, is here surveyed.

S. Of our great English bloods as careful—

For as generally in these northern parts of *England*, the gentry is from ancient time left preserved in continuance of name, blood, and place; so most particularly in this *Cheshire*, and the adjoining *Lancashire*; which, out of their numerous families, of the same name, with their their chief houses and lordships, hath been observed.

S. And of our counties, place of Palatine doth bold.

We have in *England* three more of that title, *Lancaster*, *Durham*, and *Ely*; and, until later ¹ time, *Hexamshire*, in the western part of *Northumberland*, was so reputed. *William* the Conqueror, first created one *Hugh Wolf*, a Norman, count palatine of *Chester*, and gave the earldom to hold, as freely as the king held his crown. By this supremacy of liberty, he made to himself barons, which might assist him in council, and had their courts and cognizance of pleas in such sort regarding the earldom, as other barons the crown. *Ego comes Hugo & mei barones confirmavimus ista omnia*; *I earl Hugh, and my barons, have confirmed all this*; is subscribed to a charter, whereby he founded the monastery of *S. Werburg* there. For the name of palatine, know, that in ancient time, under the emperors of declining *Rome*, the title of count palatine was; but so, that it extended first only to him ² which had care of the household and imperial revenue; which is now (so faith ³ *Wesembec*, I affirm it not) as the marshal in other courts; but was also communicated by that honorary attribute of comitiva dignitas, to many others, which had any thing proportionate, place or desert, as the code teacheth us. In later times, both in *Germany* (as you see in the *Palgrave of Rhine*) in *France*, (which the earldom of *Champaign* shews

¹ De Bell. Gallic. 3.

² Geograph. 4.

³ Trog. Pomp. lib. 41.

⁴ Franco-Gall. cap. 2. quem v. etiam ad Caesar.

com.

⁵ Elect. 2. cap. 7. epistolic. quest. 2. cap. 2.

⁶ Hist. lib. 20. in extrema.

⁷ Caesarum si legas, tibi ipsi

(satisfactions, verum & ita Leland, ad Cryg. Cant. in Baln.

⁸ Veremund. ap. Met. Boet. hist. 5.

⁹ Buchanan, lib. 4.

in Donaldo.

¹⁰ Camden. in Cornau. & Brigant.

¹¹ Stat. 1. 4. Eliz. cap. 13.

¹² C. de offic. com. fac. palat. v.

Euseb. de vit. Constant. 2. & cod. lib. 12.

¹³ In parasit. c. 1. tit. 34.

long time since in the crown; yet keeping a distinct palatine government, as *Peter Pitheav* hath at large published) and in this kingdom, such were hereditarily honoured with it, as being near the prince in the court (which they, as we, called the palace) had by their state-carriage gained full opinion of their worth, and ability in government, by delegate power of territories to them committed, and hereafter titled *countes de palais*, as our law annals call them. If you desire more particulars of the power and great state of this palatine earldom, I had rather (for a special reason) send you to the marriage of *Hen. III.* and queen *Eleanor* in *Matthew Paris*; where *John Scot*, then earl of *Chester*, bore before the king, *S. Edward's* sword, called *curtain*, which the prince at coronation of *Henry IV.* is recorded to have done as 'duke of *Lancaster*'; and wish you to examine the passages there; with what *Bratton* hath of earls, and our year-books of the high constable of *England*, than here offer it myself. To add the royalties of the earldom, as courts, officers, franchises, forms of proceeding, even as at *Westminster*, or the diminution of its large liberties by the statute of a resumption, were to trouble you with a harsh digression.

§. Our leopards they so long and bravely did advance.

He well calls the coat of *England*, leopards. Neither can you justly object the common blazon of it, by name of lions, or that assertion of *Polydore's* ignorance, telling us that the conqueror bare three fleurs de lis, and three lions, as quartered for one coat, which hath been, and is, as all men know, at this present born in our sovereigns arms for *France* and *England*; and so, that the quartering of the fleurs was not at all until *Ed. III.* to publish his title, and gain the *Flemish* forces (as you have it in *Froissart*) bare the *French* arms, being then azure semy with fleurs-de-lis, and were afterward contracted to three in time of *Hen. V.* by *Charles VI.* because he would bear different from the *English* king, who notwithstanding presently seconded the change, to this hour continuing. Nor could that *Italian* have fallen into any error more palpable, and in a professed antiquary so ridiculous. But to prove them antiently leopards; *Mist ergo* (saith *Matthew Paris*) *imperator* (that is *Frederick II.*) *regi Anglorum tres leopardos in signum regalis cyprei, in quo tres leopardi transeuntes figurantur*; The emperor sent to *Hen. III.* three leopards, as alluding to the arms of *England*. In a ms. of *J. Gower's Confessio amantis*, which the printed books have not:

Ad laudem Christi, quem tu virgo peperisti, Sit laus Richardi, quem sceptrum colunt leopardi.

And *Edward IV.* granted to *Lewis* of *Bruges*, earl of *Winchester*, that he should bear

d'azur a dix mascles en arme d'un canton de nostre propre armes d'Engleterre, cestastavoir, de goulles ung leopard passant d'or, arme d'azur, as the patent speaks; and likewise *Hen. VI.* to king's college in *Cambridge*, gave a coat armour three roses, and *summo scutis paritum principale de azoreo, cum Francorum flore, deque rubeo cum peditante leopardo*, and calls them *parcelles armorum, quae nobis in regnis Angliae & Franciae jure debentur regio*. I know it is otherwise now received, but withal, that princes, being supreme judges of honour and nobility, may arbitrarily change their arms in name and nature; as was done upon return out of the holy war in *Godfrey of Bulloigne's* time; and it seems, it hath been taken indifferently, whether you call them the one or other, both for similitude of delineations and compolure (as in the bearing of *Normandy*, the county of *Zutphen*, and such more) being blazoned in *Jerom de Barra*, and other *French* heralds, lion-leopards; and for that, even under this *Hen. VI.* a great student in heraldry, and a writer of that kind, makes the accession of the lion of *Guienne*, to the coat of *Normandy* (which was by *Hen. II.* his marriage with queen *Eleanor*, divorced from *Lewis* of *France*) to be the first three lions, born by the *English* kings.

§. *Caerlegion*, whilst proud Rome her conquests here did bold.

You have largely in that our most learned antiquary, the cause of this name from the tents of *Roman* legions, there, about *Vespasian's* time. I will only note, that *Leland* hath long since found fault with *William* of *Malmesbury*, for affirming it so called, *quod ibi emeritis legionum Julianarum resideret*; because the old soldiers of *Julius* his legions resided there; whereas it is plain, that *Julius Caesar* never came near this territory. Perhaps, by *Julius*, he meant *Agri-cola* (then lieutenant here) so named, and then is the imputation laid on that best of the monks, unjust. To help it with reading *militarium* for *Julianarum*, as the printed book pretends, I find not sufficiently warrantable, in respect that my ms. very antient, as near *Malmesbury's* time as (it seems) may be, and heretofore belonging to the priory of *S. Augustine's* in *Canterbury*, evidently persuades the contrary.

§. — the fortress upon Dec.

At this day in *British*, she is called, *Cast Leon* at *Dout Wyke*, i. e. the city of legions upon the river *Dec*. Some vulgar antiquaries have referred the name of *Leon* to a giant builder of it: I, nor they, know not who, or when he lived. But indeed ridiculously they took *Leon* baut a great legion, for king *Leon* the great; to whom the author alludes presently.

§. But

1 Livre 1. des comtes de Champagne & Brie. De palatinorum nostrorum nomine Saribus. Policar. 6. cap. 16. & epist. 267.
2 Archiv. in ms. Lond. jam vero & typis commiss. apud Comp. institut. cur.
3 De seq. rer. dom. cap. 16. §. 3.
4 V. Hen. 12. Ed. 111.
5 V. Hen. 12. Ed. 111.
6 Pont. Heuter. de vet. Belgio.
7 Nichol.
8 De pontificib. lib. 4.
9 In Deva ad cyg. Cant.
10 Pat. 17 Hen. VI. num. 46.
11 Pat. 12 Ed. IV. part. 1. memb. 12.
12 Upcon. de re militari lib. 3.
13 Liv. 1. des comtes de Champagne & Brie. De palatinorum nostrorum nomine Saribus. Policar. 6. cap. 16. & epist. 267.
14 Archiv. in ms. Lond. jam vero & typis commiss. apud Comp. institut. cur.
15 De seq. rer. dom. cap. 16. §. 3.
16 V. Hen. 12. Ed. 111.
17 V. Hen. 12. Ed. 111.
18 Pont. Heuter. de vet. Belgio.
19 Nichol.
20 De pontificib. lib. 4.
21 In Deva ad cyg. Cant.
22 Pat. 17 Hen. VI. num. 46.
23 Pat. 12 Ed. IV. part. 1. memb. 12.
24 Upcon. de re militari lib. 3.

S. But in himself thereby doth boliness retain.

He compares it with *Dee's* title presently, which hath its reason given before to the seventh song. *Wever*, by reason of the salt-pits at *Northwich*, *Nantwich*, and *Middlewich*, (all on his banks) hath this attribute, and that of the sea gods suit to him, and kind entertainment for his skill in physick, and prophecy; justifiable in general, as well as to make *Tryphon* their surgeon, which our excellent *Spencer* hath done; and in particular cause, upon the most respected and divinely honoured name of salt; of which, if you observe it used in all sacrifices by express commandment ^a of the true God, the *סֶלַח* salt of the covenant, in holy writ, the religion of the salt, first, and last taken away as a symbol ^b of perpetual friendship, that in *Homer* ^c *πᾶσι δ' ἄλοι θείοισι*, he sprinkled it with divine salt, the title of *αἵματι*, a cleanser, given it by *Lycophron*, ^d and passages of the ocean's medicinal! epithets, because of his saltiness, you shall see apparent and apt testimony.

S. From Woden, by which name they stiled Mercury.

Of the *Britons* descent from *Jove*, if you remember but *Aeneas* son to *Anchises* and *Venus*, with her derivation of blood from *Jupiter's* parents, sufficient declaration will offer itself. For this of *Woden*, see somewhat to the third song. To what you read there, I here more fitly add this; *Woden*, in *Saxon* genealogies, is ascended to, as the chief ancestor of their most royal progenies; so you may see in *Nennius*, *Bede*, *Ethelwerd*, *Florence of Worcester*, an anonymous *De regali prosapia*, *Huntingdon* and *Hoveden*, yet in such sort that in some of them they go beyond him, through *Fritswald*, *Frealaf*, *Fri-bulf*, *Fin*, *Godolph*, *Geta*, and others, to *Setb*: But with so much uncertainty, that I imagine many of their descents were just as true as the *theogony* in *Hesiod*, *Apollodorus*, or that of *Prefter Jobn's*, sometimes deriving ^e himself very near from the loins of *Solomon*. Of this *Woden*, beside my authors named, special mention is found in *Paul^o Wanfred*, who makes *Frea* his wife (others call her *Fricco*, and by her understand *Venus*) and *Adam^o* of *Breme*, which describe him as *Mars*, but in *Geoffrey of Monmouth*, and *Florilegus*, in *Hengist's* own person, he is affirmed the same with *Mercury*, who, by *Tacitus's* report, was their chief deity; and that also is warranted in the denomination of our *Woden/day*, (according to the *Dutch* *Wodensdag*) for the fourth day of the week, titled by the ancient planetary account with name of *Mercury*. If that allusion in the illustrations of the third song to *Merc*, allow it him not, then take the other first taught me by ^f *Lipsius*, fetching *Woden* from *toon* or

toon, which is to *gain*, and so make his name *Wondan*, expressing in that sense the self's name *Εἰμὸς κερδέων*, *Mercury president of gain*, used by the *Greeks*. But, without this inquiry, you understand the author.

S. Here put the German names upon the weekly days.

From their *Sunnan*, for the sun, *Monan*, for the moon, *Tuisco*, or *Tuislo*, (of whom see to the fourth song) for *Mars*, *Woden*, for *Mercury*, *Thor*, for *Jupiter*, *Fre*, *Frie*, or *Frigos*, for *Venus*, *Saetern*, for *Saturn*, they stiled their days, *Sunnan-tæg*, *Monan-tæg*, *Tuiscon-tæg*, *Woden-tæg*, *Þors-tæg*, *Frigs-tæg*, *Sættern-tæg*: Thence came our names now used *Sunday*, *Monday*, *Tuesday*, *Wednesday*, *Thursday*, *Friday*, *Saturday*; which planetary account was very ancient among the ^g *Egyptians*, (having much *Hebrew* discipline) but so superstitious, that, being great astronomers and very observant of mysteries produced out of number and quantity, they began on the *Jewish* Sabbath, and imposed the name of *Saturn*, on the next the sun, then the moon, as we now reckon, omitting two planets in every nomination, as you easily conceive it. One might seek, yet miss the reasons of that form; but nothing gives satisfaction equal to that of all penetrating *Joseph Scaliger*, ^h whose intended reason for it is thus. In a circle describe an heptagonal and equilateral figure; from whose every side, shall fall equilateral triangles, and their angles respectively on the corners, of the inscribed figure, which are noted with the planets after their not interrupted order. At the right side of any of the bales begin your account, from that to the oppositely noted planet, and so shall you find a continued course in that order (grounded perhaps among the ancients



upon mysteries of number, and interchanged government by those superior bodies over this habitable orb) which some have sweated at, in inquiry of proportions, music distances, and referred it to planetary hours; whereas they (the very name of hour for a twenty fourth part of a day, being unusual till about the *Peloponnesiac* war) had their original of later time, than this hebdomadal account, whence the hourly from the morning of every day had his breeding, and not the other from this, as pretending and vulgar astrologers receive in supposition. At last, by *Constantine* the great, and pope *Sylvester*, the name of *Sunday*, was turned into the ⁱ *Lord's day*; as it is stiled *dominicus* & *κυριακή*; of *Saturday*, into the sabbath; and the rest, not long afterward, named according to their nu-

^a Levit. ii. com. 13. & Num. xvii.

^b V. Lipl. Saturni. i. cap. 1.

^c Aethiopum.

^d Lucian, in Timone.

^e merito agnoscimus.

^f Dion. hist. Rom. i. c.

^g De Longobard. i. cap. 2.

^h Nixeph. Callist. eccl. hist. 7. cap. 1.

ⁱ Cacl. Rhodigin. antiq. lect. 12. cap. 1. v. Fluzarch. sympos. 1. cap. 10.

^j Cacl. Ant. lect. 11. cap. 22.

^k Hist. ecclesiast. lib. 4. cap. 91.

^l De emendat. temp. eundem de hac re prolegom. & lib. 7. DuDorem

^m cap. 10.

ⁿ Damian. a Goe de morib.

^o Ad Tacit. Germ. not. 12.

^p DuDorem

meral order, as the first, second, or third *feria* (that is holiday, thereby keeping the remembrance of *Easter* week, the beginning of the ecclesiastical year, which was kept every day holy) for *Sunday, Monday, Wednesday*. You may note here, *Caesar*¹ was deceived in telling us, the *Germans* worshipped no other gods but *Quos cernunt, & quorum opibus aperte juvantur, Solem, Vulcanum & Lunam, reliquos ne fama quidem accepisse; Whom they see, and have daily use of, as the sun, moon, and the fire, by name of Vulcan*. For you see more than those thus honoured by them, as also they² had their *Corse* Month for *April*, dedicated to some adored power of that name; but blame him not, for the discovery of the northern parts was but in weakest infancy, when he delivered it.

§. Good Ethelbert of Kent, first christened English king.

About the year *dc* christianity was received among the *Saxons*; this *Ethelbert* (being first induced to taste that happiness by *Berta* his queen, a christian, and daughter to *Hilperic* (or *Lothar II.*) king of *France*) was afterward baptized by *Augustine* a monk sent hither, with other workmen for such a harvest, by *PP. Gregory I.* zealously being moved to conversion of the *English* nation; so that after the first coming of *Hengist*, they had lived here *c.l.* years by the common account without tincture of true religion; nor did the *Britons*, who had long before (as you see to the eighth song) received it, at all impart it by instruction, which *Gildas* imputes to them for merit of divine revenge. *White*³ of *Basingstoke* (I must cite his name, you would laugh at me if I affirmed it) refers to *Kent's* paganism, and *British* christianity, before this conversion, the original of our vulgar by-word, *nor in Christendom, nor in Kent*.

§. That abstinence of flesh for forty days began.

Began it here, so understand him, for plainly that fasting time was long before in other churches, as appears in the decreeing⁴ epistle of *PP. Telephorus*, constituting that the clergy should fast from *Quinquagesima* (that is, *Shrove-Sunday*) to *Easter*, whereas the laity, and they both were before bound but to six weeks, accounted, as now, from the first *Sunday* in *Lent*. So, that even from the⁵ first of christianity, for remembrance of our Saviour, it seems, it hath been observed, although I know it hath been referred to *Telephorus*, as first author. He died in *c.xl.* of *Christ*. But if you compare this of him with⁶ that of *PP. Melchior* some *c.lxx.* years after, taking away the fast upon *Sunday* and *Thursday*, you will lose therein forty days, and the common name of *Quadragesima*; but again find it thus. *S. Gregory*⁷ (after both the) makes *Lent* to be so kept, that yet no fasting

be upon *Sundays*, because (among other reasons) he would have it as the tenth of time consecrated to God in prayer and abstinence, and the canonists, how justly I argue not, put it in their division of personal tythes. Then, in this form, after the exception, calculate out his number. From the first *Sunday* in *Lent*, to *Easter*, are 6 weeks; that is, 42 days; whence 6 *Sundays* subtracted, remain 36; which (fractions avoided) is the quotient of 365; being the number of the common year, divided by 10. But seeing that holy number (as he calls it) of 40, which our Saviour honoured with his fasting, is, by this reckoning, excluded; he adds, to the first week, the 4 last days of the *Quinquagesima*, that is, *Ab-Wednesday, Thursday, Friday, and Saturday*; so keeping both his conceit of tything, and also observation of that number, which we remember only (not able to imitate) in our essayed abstinence. For proof of this in *Erconbert*, both *Bede* and *Malmesbury*, besides their later followers, are witnesses. Their *Saxon* name near ours, was⁸ *Lencten-fæsten*, as the other four fasts, *ymbþen fæsten*.

§. So Ella coming in soon from the Britons won.

Near forty years after the *Saxons* first arrival, *Ella*, (of the same nation) with his sons *Pleuncing*, or *Pleting*, *Cimen*, and *Cissa*, landed at *Cimenesore* in the now *Suffex* (it is supposed⁹ to be near the *Witterings* by *Chichester*) and having his forces increased by supply, after much bloodshed betwixt him and the *Britons*, and long siege of the city *Andredceaster*, now *Newenden* in *Kent*, (as learned *Camden* conjectures) got supreme dominion of those southern parts, with title of king of *Suffex*, whose son and successor *Cissa*'s name, is yet there left in¹⁰ *Cyrt-cearce* for *Chichester*, and in a hill incircled with a deep trench for military defence, called *Cisbury*, by *Offington*. The authority begins with him after the *Kentish*; for he was the first that made the number of the *Saxon* kings plural, by planting and here reigning over the fourth *Saxons*; And as one was always in the heptarchy, which had title of first, or chief king of the *Angles* and *Saxons*, so this *Ella* not only was honoured with¹¹ it, but also the prerogative by priority of time, in first enjoying it, before all other princes of his nation; but his dominion afterward, was for the most part still under the *Kentish* and west *Saxon* kings.

§. Saint Wilfrid sent from York into his realm received.

This *Wilfrid*, archbishop of *York*, expelled that see by *Egfrid*, king of *Northumberland*, was kindly received by *Edilwalch* (otherwise *Ethelwalch*, being before christened through religious persuasion of his godfather *Wulpher*,

¹ Comment. Gallic. 6.

² Bed. lib. de temporibus.

³ Hist. 2. not. 24.

D. Ambrosius.

⁴ In homil. diid. 5. de consecrat. c. 16.

⁵ Rebut. tract. de centur. quæst. 3. num. 31.

⁶ Dist. 4. c. 4. statutus & ibid.

⁷ Dist. 4. de consecrat. c. 14. jejunium.

⁸ Canut. leg. 16.

⁹ Ethelwerd. hist. 3. cap. 2. Bed.

antiq. charta ecclies. Selesfen. ap. Camden.

¹⁰ So it is called in Florent. Wigorn. pag. 331.

hist. 2. cap. 5.

king of *Mercland*) and converted the *South Saxons* to the gospel. He endowed this *Wilfrid* with *Selfey*, a chersonese in *Suffex*, and was so founder of a bishoprick, afterward translated, under the *Norman* conqueror, to *Chichester*, whose cathedral church in publick monuments honours the name of *Cedwalla* (of whom see to the ninth song) king of *West Sex* for her first creator; but the reason of that was rather because *Cedwalla*, after death of *Edilwalch*, (whom he slew) so honoured *Wilfrid*,¹ *ut magistrum & dominum omni provinciae cum praefecit, nihil in tota provincia sine illius assensu faciendum arbitratus; that he committed the supreme government of that province to him; Whereupon it was, as it seems, thought fit (according to course of yielding, with the way of fortune) to forget Eldiwalch and acknowledge Cedwalla (then a pagan) for first patron of that episcopal dignity. It is reported, that three years, before this general receipt there of *Chrif's* profession, continued without rain; in somuch that famine, and her companion pestilence, so vexed the province, that in multitudes of forty or fifty at a time, they used hand in hand, to end their miseries in the swallowing waves of their neighbouring ocean: But, that all ceased upon *Wilfrid's* preaching; who taught them also first (if *Henry of Huntingdon's* teaching deceive me not) to catch all manner of fish, being before skilled only in taking of eels. I know,² some make *Eadbert* abbot of the monastery in *Selfey*, under king *Ine*, first bishop there, adding, that before his time, the province was subject to *Wincheſter*; but that rightly understood, discords not; that is, if you refer it to instauration of what was discontinued by *Wilfrid's* return to his archbishoprick.*

S. Adopting for his heir young Edmund —

Penda king of *Mercland*, had slain *Sigebert* (or *Sebert*) and *Anna* kings of *East-Angles*, and so in dominion might be said to have possessed that kingdom; But *Anna* had divers successors of his blood, of whom, *Ethelbert* was traitorously slain in a plot dissembled by *Offa* king of *Mercland*, and this part of the heptarchy confounded in the *Mercian* crown. Then did *Offa* adopt this *S. Edmund*, a *Saxon*, into name of successor in that kingdom; which he had not long enjoyed, but that through barbarous cruelty, chiefly of one *Hinguar* a *Dane* (*Polydore* will needs have his name *Agner*) he was with miserable torture martyred, upon the 19th of *November*, *cccc.lxx*, whither his canonization directeth us for holy memory of him.

S. And slew a thousand monks as they devoutly prayed.

You may add ce to the author's number. This *Ethelfrid*, or *Edilfrid*, king of *Northumberland*, aspiring to increase his territories, made war against the bordering *Britons*. But as he

was in the field, by *Chester*, near the onset, he saw, with wonder, a multitude of monks assembled, in a place by, somewhat secure; demanded the cause, and was soon informed that they were there ready to assist his enemies swords with their devout orizons, and had one called *Brocmail*, professing their defence from the *English* forces. The king no sooner heard this, but *Ergo* (saith he being a heathen) *si adversus nos, ad dominum suum clamant, profecto & ipsi quamvis arma non ferant, contra nos pugnant, qui adversus nos imprecationibus persequuntur*; If they pray to their God against us, then plainly they fight against us; presently commands their spoil; which was so performed by his soldiers, that *ccc.c* were in their devotions put to the sword. A strange slaughter of religious persons at one time and place! But not so strange as their whole number in this one monastery, which was *ccc.ccc* not such idle lubberly lobs as later times pestered the world withal, truly pictured in that description of (their character) sloth.

— With two stumpy eyes

I must sit said the fegge, as idle I must needs nap,
I may not stonde ne stoupe, ne without mi stole neere,
where I brought a bed (but if my talende it made)
shoulde ne ringing do me rise, as I were ripe to dine.
He began Benedicite with a beke, and his beile knoked
And rasked, and robed, and rut at the last;
If I shoulde ope by this dais, me lyfte not to loke,
I can not perchtly my Fater noth, as the priest it singeth
But I can rimes of Robin Hod, and Randall of Chester,
But of our Lord as our Lady, I trow nothing at all.
I am occupied euerie day, holy day and other
With idle tales at the Ale, and other while in churches;
Goes paine and his pesson full seide thinke I thereon.
I visited never feblemen, ne fettered folke in piter,
I have lreue here an harlotrie, as a somers game,
As leadings to laugh at and bilpe my neighbours,
Then all that euer Marke made, Math, John and Lucas,
And vigiles and fasting daies all these let I passe
And lie in bed in Lent, and mi lerrman in mine armes,
I have ben priest and parson passing chytie wintre
Yet I can nether sol fe ne sing, ne saintes lives read.
But I can find in a feild, as in a furlong an bare
Better then in beatus vir, as in beati omnes.

Not such were those *Bangor* monks; but they *omnes de labore manuum suarum vivere solebant; all lived of handy labour*. Observe here the difference betwixt the more ancient times and our corrupted neighbour ages, which have been so branded, and not unjustly, with dissembled bestial sensualities of monastick profession, that in the universal visitation under *Hen. VIII.* every monastery afforded shameful discovery of sodomites and incontinent friers. In *Canterbury* priory of *Benedictines* nine sodomites, in *Battel* abbey fifteen, and in many other, like proportion. Larger reckoning will not satisfy if you account their wenches which, married and single, (for they affected that variety) supplied the wants of their counterfeited solitariness. So that, hereupon, after an account of de convents of monks and friers, with mendicants, in this kingdom, when time endured them, *Je laissez*, saith

¹ Malmesb. de gest. pontific. 3.

² Math. Westmonasterienſis.

³ Rob. de Langland, five Joannes Malverne pass. 5.

^k *once, maintenant au lecteur calculer combien par le moins devoit estre de fils de putains en Angleterre, je di seulement fils de moines & de putaines; I leave it to the reader to guess, how many bastards the monks and friars got for the laity.* These were they who admired all for *Hebrew* or *Greek* which they understood not, and had at least (as many of our now professing formalists) *Latin* enough to make such a speech as *Rablais* hath to *Gargantua* for *Paris* bells, and call for their *vinum Cor*; which, in one of them personated, receive thus from a noble^l poet.

*Fac extra: nihil hoc: extra totum sit oportet,
Sobrie n. jussu atque pie potare jubet lex.
Vinum lactificat cor hominis, praecipue Cor.
Gratia sit Domino, vinum Cor, inquit, habemus.*

How my reader tastes this, I know not; therefore I willingly quit him; and add only, that *William of Malmesbury* grossly errs in affirming that this *Bangor*^m is turned into a bishoprick; but pardon him, for he lived in his cloister, and perhaps was deceived by equivocation of name, there being in *Caernarvan* a bishoprick of the same title to this day, which some body laterⁿ hath on the other side ill taken for this.

§. Who re-ordained York a bishop's government.

For in the *British* times it had a metropolitick see (as is noted to the ninth song) and now by *Edwin* (converted to christian discipline both through means of his wife *Ethelburg*, daughter to *Ethelbert* king of *Kent*, and religious persuasion of God's ministers) was restored to the former dignity, and *Paulinus*, in it, honoured with name of archbishop, being afterwards banished that province, and made bishop of *Rochester*, which, some have ignorantly made him before.

§. Nor those that in the stem of Saxon Crida came.

Most of our chronologers begin the *Mercian* race royal with *Penda*; but *Henry of Huntingdon* (not without his proofs and followers) makes *Crida* (grandfather to *Penda*) first in that kingdom.

§. Confirmed in Christ's belief by that most reverend Chad.

This *Wulpher*, son to *Penda*, restored to his father's kingdom, is^o reported with his own hands to have slain his two sons, *Wulphald* and *Rafin*, for that they privily withdrew themselves to that famous *St. Chad*, or *Cedda*, bishop of *Lichfield*, for instruction in the christian faith; and all this is supposed to be done where the now *Stone* in *Staffordshire* is seated. Hereupon the author relies. But, the credit of it is more than suspicious, not only for that in classic authority I find his issue only to be *Kenred*, and

St. Werburge (by *Ermengild*, daughter to *Erconbert* of *Kent*) but withal, that he was both christian, and a great benefactor to the church. For it appears, by consent of all, that *Peada*, *Weda*, or *Penda*, (all these names he hath) eldest son of the first *Penda*, first received in *Middle Engle* (part of *Mercland*) the faith, and was baptized by *Finnan* bishop of *Lindisfarne*; after whose violent death, in spite of *Ofwy*, king of *Northumberland*, *Immin*, *Ebba*, and *Edberth*, gentlemen of power in *Mercland*, saluted *Walpur* (brother to *Peada*) king of all that province, who was then, as it seems, (by *Florence* of *Worcester*, and *Bede*'s reporting of four bishops in succession preferred by him) of christian name; But howsoever he was at that time, it is certain that in the second or third years of his reign, he was godfather to king *Edikwald* of *Suffex*, and bestowed on him as a gift, in token of that spiritual adoption, the *Ile of Wight*, with another territory in *West Saxony*, and gave also to *S. Cedda*, (made, by consent of him and king *Ofwy*, bishop of *Lindisfarne*) fifty hides of land (a *hide*,^q a plough land, or a *carve*, I hold clearly equivalent) towards foundation of a monastery. All this compared, and his life, in our monks, observed, hardly endures this note of persecution; which in respect of his founderhip of *Peterborough* abbey, *Robert of Swapham*, a monk there, reporting it, or those from whom he had it, might better in silence have buried it, or rather not so ungratefully feigned it. I only find one thing notably ill of him; that he, first of the *English* kings, by simony made a bishop, which was *Wine* of *London*, as *Malmesbury* is author.

§. And (through his rule) the church from taxes strongly freed.

Ethelbald, king of *Mercland*, founder of *Crowland* abbey in *Lincolnshire*, a great, martial, and religious prince, in a synod held, (*Cuthbert*, then archbishop of *Canterbury*) enlarged ecclesiastick liberty in this form; *Donationem meam me vivente concedo, ut omnia monasteria & ecclesiae regni mei a publicis vestigaliis, operibus, & oneribus, absolvantur, nisi instructionibus arcium vel pontium, quae nunquam ulli possunt relaxari, i. e.* he discharged all monasteries and churches of all kind of taxes, works, and imposts, *excepting such as were for building of forts, and bridges*; being (as it seems, the law was then) not releasable. For, beside the authority of this statute of *Ethelbald*, it appears frequent in charters of the *Saxon* times, that, upon endowment, and donations to churches, with largest words of exemption, and liberty from all secular charges, the conclusion of the *habendum*, was, *exceptis istis tribus, expeditione, pontis, arcisque constructione, excepting those three, aid in war, mend-*

^k H. Stephen en le introduit, au titre de la conformité, &c., chap. 51. ^l An. Doux, Gayr, 4. ^m In hist. & lib. 4. de pontificis, in Docecentrenibus.

ⁿ Aut. lib. academ. per Europ. edit. 1590.

^o Robert de Swapham in hist. Peterburgensi.

^q It is thus now called Holy Island, by east the utmost parts of Northumberland, whence the bishopric about DECE, XCV, was transferred to Durham.

^r Ita. n. apud Marit. Paris, Huntingdon.

^s Th. Waulingham docemur, licet ali 100 scri, ali aliter definian. Caeterum quod maxime mover, & absque haecitatione in hanc sententiam posui in eogis, et ubi ex Dunlani charta (an. DECE, LXII) qua terras parvam concessit fraterum quod dicitur dicitur septem b. d. Nec in memoriam hic te vellem vocabili illius apud J. C. eos pullos, hnt & gant, quod arcum reficere interpretari haut ignorat dupondius quipiam

ing of bridges and forts; 'which among common notaries, or scriveners, was so well known, that they called it by one general name, *trinoda necessitas*, a three knotted necessity, as out of *Cedwalla's* charter, A.D. DCLXXX. to *Wilfrid*, first bishop of *Seisby*, of the manor of *Pagenham* (now *Pagham*) in *Suffex*; I have seen transcribed; Whereupon in a deliberative (concerning papal exactions, and subjection of church-living) held under *Hen.* III. after examination of ancient king's indulgence to the clergy, it was found, that; *Non adeo libertati dederunt hujusmodi possessiones, quin tria sibi reservarent semper propter publicam regni utilitatem, videlicet, expeditionem pontis, & arcis reparaciones, vel refectiones, ut per ea resisterent hostium incursumibus*; they always reserved those, that so they might the better be furnished against the enemies invasion; Although by words of a statute of *Ethelwulf*, king of *West-Saxons* in the year DCCCLV. made by advice both of laity, and spirituality, the church was quitted also of those three common-wealth causes of subsidy, but enjoyed it not; For, even the 'canons themselves subject their possessions to these services and duties; and upon interpretation of a charter made by *Henry Beauchere*, founder of the priory of *St. Oswald* in *Torkshire*, containing words of immunity and liberty of tenure, as general and effectual as might be, a great lawyer 'long since affirmed, that yet the house was not freed of repairing bridges and causeways. But all lands, as well in hands of clerks, as lay, were subjected to particular tenures after the conquest; and so these kind of charges and discharges being made

rather feudal (as *Bratton* calls them) than personal, use of them in charters consequently ceased. I note here to students of antiquity, that, where the printed *Inguib* says this was done by *Ethelwald* in the third year of his reign, they must with correction make it the thirty third, as is, without scruple, apparent in the date of 'the synod, which was D.CCXLV. of our Saviour.

§. *The Britons had interr'd their proto-martyrs bones.*

In that universal persecution under *Dioclesian*, 'and *Herculius*, this isle gave, in *St. Alban*, testimony of christian profession; even to his last breath drawn among tormenting enemies of the cross. His death, (being the first martyr, as the author here calls him, that this country had) was at *Werlamcester* (i. e. the old *Verulam*) where by, the abbey of *St. Alban* 'was afterward erected.

§. *(Extirpating other styles) and gave it 'England's name.*

Look back to the last note on the first song. Thus, as you see, hath the muse compendiously run through the *Hepstarchy*, and united it in name and empire under *Egbert*, king of *West-Saxons*; after whom, none but his successors, had absolute power in their kingdoms, as course of story shews you. Likely enough I imagine, that, as yet, expectation of the reader is not satisfied in these seven kingdoms, their beginnings, territory, and first christianity; therefore, as a corollary, receive this, for the eye's more facile instruction.

	Began in	First received faith in
I. Kent. The now Kent.	I. Hengist CD. LVI. from whose son Oise, the succeeding kings were called Oisings.	I. Ethelbert D.CXCVII. of Augustine from Gregory I.
II. South-Sex. } Suffex. Surrey. Cornwall. Devonshire.	II. In Ella about CD. XCI.	II. Edithwalc DC. LXI. and the whole country converted by Wilfrid DC.L. XXIX.
III. West-Sex. } Dorset. Somerset. Wilton. Southampton. Berkshire. Lancaster. York. Durham. Westmoreland.	III. Certic, DXIX. whose grand-father was Gewise, and thence his people and posterity called Gewises.	III. Kinegils DC. XXXV. baptized by Birin, first bishop of Dorchester in Oxfordshire.
IV. Northumberland. } Northumberland, and the neighbouring territories, to Edinburgh Frith; whither from Tine was the name of Bernicland, and what lay on this side Tine, called, Deirland.	IV. Ida D. XLVII. taking all Bernicland, as Ella XII years after began in Deirland; but both kingdoms soon were con-founded in one.	IV. Edwin DC. XXVI. christened by Paulin first archbishop (in the Saxon times) of York.

' V. Characm hujusmodi apud D. Ed. Cok. in epit. ad lib. 6. ecclef. c. pervenit. 1.

' Malmesb. lib. de gest. pontif. 1.

' Knivet 44. Ed. III. fol. 25. 2.

' See the author in the XVI song.

' Math. Paris, pag. 838.

' DCC.LX. aut circiter,

' Gregor. decret. tit. de imm.

' De acquir. reg. dom. 2. cap. 16. §. 1.

' A. circa D.CCC.

		Began in	First received faith in
Compre- hended in.	V. <i>Est- Sex.</i>	<i>Essex.</i> <i>Middlesex.</i> Part of <i>Hereford.</i>	V. <i>Sleda</i> , after some (others say in <i>Er- chinwin</i> before him) about D. LXXX. both uncertain, and their successors.
	VI. <i>Est- Angle.</i>	<i>Norfolk.</i> <i>Suffolk.</i> <i>Cambridgeshire.</i> Part of <i>Ely.</i> <i>Glocester.</i> <i>Hereford.</i> <i>Worcester.</i> <i>Warwick.</i> <i>Leicester.</i> <i>Rutland.</i> <i>Northampton.</i> <i>Lincoln.</i> <i>Huntingdon.</i> <i>Bedford.</i> <i>Buckingham.</i> <i>Oxford.</i> <i>Stafford.</i> <i>Derby.</i> <i>Salop.</i> <i>Nottingham.</i> <i>Chester.</i> The northern part of <i>Hereford.</i> But in these the inhabitants of them inlands were called <i>Middle-Eng- les</i> , and the <i>Merci- ans</i> divided into names of their local quarters.	VI. <i>Redwald</i> , about DC. but some talk of one <i>Vuffa</i> (whence these kings were cal- led <i>Vuffings</i>) to be author of it near XXX years before. VII. In <i>Penda</i> DC. XXVI. others will in <i>Crida</i> , some XL. be- fore.
	VII. <i>Merc- land.</i>		V. <i>Sebert</i> , DC. IV. dipt in holy tincture by <i>Mellitus</i> , first bishop of <i>London</i> . VI. <i>Eorpwald</i> DC. XXXII. although <i>Redwald</i> were christened, for he soon fell to apostacy, by persuasion of his wife, and in the same chapel made one al- tar to Christ, another to the devil. VII. <i>Peada</i> , king of <i>Middle Engle</i> DC. LIII. baptized by <i>Finna</i> , bishop of <i>Lindisfarne</i> , but enlarged the pro- fession of it in <i>Vul- pher</i> , next king there.

Perhaps as good authority may be given a-
gainst some of my proposed chronology, as I
can justify myself with. But although so, yet
I am therefore freed of error, because our old
monks exceedingly in this kind corrupted, or
deficient, afford nothing able to rectify. I know
the *East-Angles*, by both antient and later au-
thority, begin above a hundred years before;
but if with synchronism you examine it, it will
be found most absurd. For, seeing it is affirm-
ed expressly, that *Redwald* was slain by *Ethel-
frid*, king of *Northumberland*, and being plain
by *Bede* (take his story together, and rely not
upon syllables and false printed copies) that it
must needs be near DC. for *Edwin* succeeded
Ethelfrid, and that, *Uffa* was some xxx years
before; What calculation will cast this into less
than D. years after Christ? Forget not (if you
desire accurate times) my admonition to the
fourth song, of the xxii. years error upon the
Dionysian account, especially in the beginning
of the kingdoms, because they are for the most
part reckoned in old monks from the coming of
the *Saxons*. Where you find different names
from these, attribute it to misreading old copies,
by such as have published *Carpenwald* for *Eor-
penwald*, or *Earpwald*; *Penda* also perhaps
for *Wenda*, mistaking the *Saxon* *γ*. for our P.
and other such, variably both written and print-

ed. How in time they successively came under
the *West-Saxon* rule, I must not tell you, unless
I should untimely put on the person of an histo-
rian. Our common annals manifest it. But
know here, that although seven were, yet but
five had any long continuance of their supre-
macies.

The Saxons tho in the power (tho this were so true)
But kingdoms made in Englonde and * tute by bite,
The king of Northumberland, and of Eastangle also.
Of Kent and of Westsex, and of the March they to.
* Afterward.

as *Robert* of *Glocester*, according to truth of
story, hath it; for *Essex* and *Southsex* were not
long after their beginnings (as it were) annexed
to their ruling neighbour princes.

§. A nation from their first bent naturally to
spoil.

Indeed so were universally the *Germans* (out
of whom our *Saxons*) as *Tacitus* relates to us;
*Nec arare terram aut expectare annum tam
facile persuaseris, quam vocare hostes & vulnera
mereri. Pigrum quinimo & iners videtur,
sudore acquirere, quod possis sanguine parare.*
You could not so easily persuade them to bus-
bandry, as to martial conflict; nor thought
they it better than slothful, to get that by sweat,

* Eccles. hist. i. cap. 9. ubi legendum sexcentesimo vice nō quingentesimo.

which they might have by blood. And more of that nature we read in him.

§. Of famous Cambridge first —

About the year DC.XXX.*Sigebert*, (after death of *Eorwald*) returning out of *France*, whither his father *Redwald* had banished him, and receiving the *East-Angle* crown, assisted by *Felix* a *Burgognon*, and first bishop of *Dunwich* (then called *Dunmoe*) in *Suffolk*; desiring to imitate what he had seen observable in *France*, for the common good, institut *scholam*, (read it *scholas*, if you will, as some do, I see no consequence of worth) in qua pueri literis erudirentur, instituted a school for children, as *Bede* writeth. Out of these words thus general, *Cambridge* being in *Eastangle*, hath been taken for this school, and the school for the university. I will believe it (in so much as makes it then an university) nor much sooner than that (I know not what) *Gurguntius* with *Cantaber*, some CL. years before *Christ*, founded it; or, those charters of king *Arthur*, bulls of pope *Honorius* and *Sergius* sent thither; *Anaximander* or *Anaxagoras* their studies there, with more such pretended and absurd unlikelihoods; unless every grammar school be an university, as this was, where children were taught by *paedagogi* & *magistri juxta morem Cantuariorum, schoolmasters, according to the fashion* at *Canterbury*, as *Bede* hath expressly; which so makes *Canterbury* an university also. But neither is there any touch in authentick and antient story, which justifies these schools instituted at *Cambridge*, but generally somewhere in *Eastangle*. Reasons of inducement are framed in multitudes on both sides. But, for my own part, I never saw any sufficiently probable, and therefore most of all rely upon what authorities are afforded. Among them I ever preferred the appendix to the story of *Crowland*, supposed done by *Peter* of *Blois*, affirming, that under *Hen. I.* (he lived very near the same time; therefore believe him in a matter not subject to causes of historians temporizing) *Joffred*, abbot of *Crowland*, with one *Gilbert* his commoigne, and three other monks came to his manor of *Cotenham*, as they used oft-times, to read; and thence daily going to *Cambridge*, conducto quodam horreo publico suas scientias palam profitentes, in brevi temporis excursu, grandem discipulorum numerum contraxerunt. Anno vero secundo adventus illorum, tantum accrevit discipulorum numerus, tam ex tota patria, quam ex oppido, quod quaelibet domus maxima, horreum, nec ulla ecclesia sufficeret eorum receptaculo; Hired a barn to read in, and so continued till the number of their scholars exceeded the content of that, or any church, &c. and so goes on with an ensuing frequency of schools. If before this there were an university, I imagine that in it was not professed *Aristotle's* ethics, which tell us *ἡμεῖς τῆς ἡμετέρας παιδείας*: for, then would they not have permitted learned readers of the sciences (whom

all that hated not the muses, could not but love) to be compelled into a barn, instead of schools. Nor is it tolerable in conceit, that for near D. years (which interceded 'twixt this and *Sigebert*) no fitter place of profession should be erected. To this time others have referred the beginning of that famous seminary of good literature: and, if room be left for me, I offer subscription; but always under reformation of that most honoured tutress's pupils, which shall (omitting fabulous trash) judiciously instruct otherwise. But the author here, out of *Polydore*, *Leland*, and others of later time relying upon conjecture, hath his warrant of better credit than *Cantilup*, another relater of that *Arcadian* original, which some have so violently patronized.

§. Renowned Oxford built & Apollo's learned brood.

So it is affirmed (of that learned king yet knowing not a letter till he was past XII.) by *Polydore*, *Bale*, and others; grounding themselves upon what *Alfred*'s beneficence and most deserving care hath manifested in royal provision for that sacred nourice of learning. But justly it may be doubted, lest they took instauration of what was deficient, for institution; for although you grant that he first founded *University college*; yet it follows not, but there might be common schools, and colleges, as at this day in *Leyden*, *Giesse*, and other places of high and low *Germany*. If you please, fetch hither that of *Greeklade* (to the third song) which I will not importune you to believe; but without scruple you cannot but credit that of a monk of *St. Dewi's* (made grammar and rhetoric reader there by king *Alfred*) in these words of the year DCCC. LXXXVI. *Exorta est pessima ac teterrima Oxoniae discordia inter Grimboldum*, (this was a great and devout scholar, whose aid *Alfred* used in his disposition of lectures) *doctissimisque illorviro quos secum illuc adduxit, & veteres illos scholasticos quos ibidem invenisset; qui ejus adventu, leges, modos, ac praelegendi formulas ab eodem Grimboldo institutas, omni ex parte amplecti recusabant.* And a little after; *Quinetiam probabant & ostendebant, idque indubitato veterum annalium testimonio, illius loci ordines ac instituta, a nonnullis piis & eruditissimis hominibus, fuisse sancita, ut a Gilda, Melkino* (he was a great mathematician, and as *Gilda* also, lived between D. and DC.) *Nennio*, (the printed book hath falsely *Nemrio*) *Kentigerno* (he lived about D. LX.) *& aliis, qui omnes literis illic consenserunt, omnia ibidem felici pace & concordia administrantes;* and affirmed also, that letters had there been happily professed in very antient time, with frequency of scholars, until irruptions of pagans (they meant *Danes*) had brought them to this lately restored deficiency. After this testimony, greater than all exception, what can be more plain, than the noble worth and fame of this pillar of the muses, long before king *Alfred*? Neither make I any great question, but that, where in an

^d After. Menevent. de gest. Alfred.

which of antient time were there before, &c.

Florent Wigorn, pag. 209.

^e A great controversy grew betwixt those new scholars which Alfred brought thither, and those

About Alfred's time, before his instauration, a grammarian was not found in his

old copy of *Gildas* his life (published lately by a ² *Frenchman*) it is printed, that he studied at *Iren*, which clearly he took for a place in this land, it should be *Ichon* (and I confess, before me, ³ one hath well published the conjecture) for *Ryb-Ichin* the *Welsh* name of that city, expressing as much as *Oxford*. Yet I would not willingly fall into the extreams of making it *Memprikes*, as some do; that were but vain affectation to dote on my reverend mother. But because in those remote ages, not only universities and publick schools, (being ¹ for a time prohibited by PP. Gregory for fear of breeding *Pelagians* and *Arians*) but divers monasteries and cloysters were great auditories of learning, as appears in *Theodore* and *Adrian's* professing at *Canterbury*, *Maldulph* and *Adelm* at *Malmesbury* (this ⁴ *Adelm* first taught the *English* to write *Latin* prose and verse) *Alcuin* at *Tork*, *Bede* at *Larrow*, and such other more; I guess that hence came much obscurity to their name, omitted or suppressed by envious monks of those times, than whose traditions descending through many hands of their like, we have no credible authorities. But whichever of these two sisters have prerogative of primogeniture (a matter too much controverted betwixt them) none can give them less attribute, than to be two radiant eyes fixed in this island, as the beauteous face of the earth's body. To what others have by industrious search communicated, I add concerning *Oxford* out of an ⁵ ancient ms. (but since the *Clementines*) what I there read; *Apud Montem Pessulanum, Parisos, Oxoniæ, Colonia, Bononiæ, generalia studia ordinantur*. At Montpelier, Paris, Oxford, Cologne, Bologna, we institute general studies. Ad quæ prior provincialis quilibet possit mittere duos fratres qui habeant studentium libertatem. And also admonish the reader of an imposture thrust into the world this last autumn mart, in a provincial catalogue of bishopricks, by a professed antiquary ⁶ and popish canon of *Antwerp*, telling us, that the ms. copy of it, found in S. Victor's library at *Paris*, was written 9 years since, and in the number of *Canterbury* province, it hath *Oxford*; which being written *Oxonienfis*, I imagined might have been mistaken for *Exoniensis* (as *Exonia* for *Oxonia* sometimes) until I saw *Exoniensis* joined also; by which stood *Petroburgensis*, which bruised all the credit of the monument, but especially of him that published it. For, who knows not that *Peterborough* was no bishoprick till *Hen. VIII*? Nor indeed was *Oxford*, which might be easily thought much otherwise, by incidence of an ignorant eye on that vainly promising title. I abstain from expatiating in matter of our muses scats, so largely, and too largely treated of by others.

S. And into several shires the kingdom did divide.

To those shires he ⁷ constituted justices and sheriffs, called *sepenas* and *shyngeneras*, the office of those two being before confounded in *vice-domini*, i. e. *lieutenants*; but so, that *vice-dominus* and *vicecomes*, remained indifferent words for name of sheriff; as, in a charter of king *Edred* 999ccca. *Ego Binguilph vicecomitis consului* ✠. *Ego Alfer vicecomes audivi* ✠. I find together subscribed The justices were, as I think, no other than those whom they called *colopmannum*, being the same with copies, now *earls*, in whose disposition and government upon delegation from the king (the title being officary, not hereditary, except in some particular shire, as ⁸ *Leicester*, &c.) the county was. With the bishop of the diocese, the earl ⁹ sat in the *scyresemote* twice every year, where charge was given touching *God's right* and *the world's*. But by the ¹⁰ Conqueror, this meddling of the bishop, in *Turns*, was prohibited. The sheriff had then his monthly court also, as the now county court, instituted by the *Saxon Ed. I.* as that other of the *Turn* by king *Edgar*. The sheriff is now immediate officer to the king's court, but it seems, that then the earl (having always the third part of the shires profits; both before ¹¹ and since the *Normans*) had charge upon him. For this division of counties; how many he made, I know not; but *Malmesbury*, under *Ethelred*, affirms, there were xxxii, (*Robert of Gloucester*, xxxv) about which time *Winchelcomb* was one, ¹² but then joined to *Glocestershire*; those xxxii ¹³ were

Kent,	
Suffex,	
Surrey,	
Hampshire,	
Berkshire,	
Wiltshire,	
Somerset,	
Dorset,	
Devonshire.	
ix. governed by the west Saxon law.	
Essex,	Huntingdon
Middlesex,	Northampton,
Suffolk,	Leicester,
Norfolk,	Derby,
Hertford,	Nottingham,
Cambridge,	Lincoln,
Bedford,	Tork.
Buckingham,	
xv. by the Danish law.	
Oxford,	
Warwick,	
Glocester,	
Hereford,	
Shropshire,	
Stafford,	
Cheshire,	
Worcester,	
viii. by the Mercian law.	

¹ Joana, a Bosco Parisiensis in bibliothec. Floriacens. vit. Gild. esp. 6. ad Cyg. Cant. in Granta.

² Albert. Miræus in notit. episcopat. edit. Parisiis 1610.

³ Edgar, leg. human. esp. 5. Edw. ad. esp. 11. Cant. esp. 17. transcripsimus in Jano Anglorum lib. 2. f. 14. & videtur apud Fox. hist. eccl. 4. Wigorniensis apud Cam. in Dobanis.

⁴ Polychronicon lib. 1. esp. de provinciis.

⁵ Bri. Tuin. apolog. Oxon. 2. f. 14.

⁶ Constitutiones fratrum. esp. de studiis & magist. student.

⁷ Hist. Crowlandensis.

⁸ Rot. chart. 2. Rich. II. pro decan. & capit. Lincoln.

⁹ See to the xiii. seq.

¹⁰ Leland.

¹¹ V. ad Cant. xiii.

¹² Codex

Here was none of Cornwall, Cumberland (sitled also *Carlisle-shire*) Northumberland, Lancaster, Westmorland, (which was since titled *Appleby-shire*) Durham, Monmouth, nor Rutland, which at this day make our number (beside the xii in *Wales*) xi. Cornwall, because of the Britons there planted, until the Conqueror gave the county to his brother Robert of Moreton, continued out of the division. Cumberland, Northumberland, Westmorland, and Durham, being all northern, seem to have been then under *Scottish*, or *Danish*, power. But the two first received their division, as it seems, before the conquest; for Cumberland had its particular governors, and Northumberland earls; Westmorland perhaps began when king John gave it Robert Vipont, ancestor to the *Clifords*, holding by that patent to this day the inheritance of the sheriffdom. Durham religiously was with large immunities given to the bishop, since the Norman invasion. Lancaster, until Hen. III. created his younger son Edmund Crookback, earl of it, I think, was no county; for, in one of our old year¹ books, a learned judge affirms, that, in this Henry's time, was the first sheriff's turn held there. Nor until Edward (first son to Edmund of Langley, duke of York, and afterward duke of Aumerle) created by Rich. II. had Rutland any earls. I know for number and time of those, all authority agrees not with me; but I conjecture only upon selected. As Alfred divided the shires first, so to him is owing the constitution of hundreds, tythings, lathes, and wapentakes; to the end that whosoever were not lawfully, upon credit of his boroughs, *i. e.* pledges, admitted in some of them for a good subject, should be reckoned as suspicious of life and loyalty. Some steps thereof remain in our² antient and later law books.

§. Which be an heirloom left unto the English throne.

The first healing of the king's evil, is referred to this Edward³ the Confessor; and, of a particular example in his curing a young married woman, an old⁴ monument is left to posterity. In France, such a kind of cure is attributed to their kings also. Both of that and this, if you desire particular inquisition, take doctor Tooker's *charisma sanationis*.

§. Our countries common laws did faithfully produce.

In Lambard's *Archæonomy*, and Roger of Hoveden's *Hen. II.* are laws under name of the Confessor and Conqueror joined, and deduced, for the most part out of their predecessors; but those of the Confessor seem to be the same, if *Malmsbury*⁵ deceive not, which king Chut collected, of whom his words are; *Omnes leges ab antiquis regibus & maxime antecessore suo Ethelredo latas, sub interminatione regiae*

multitæ, perpetuis temporibus observari præcepit, in quarum custodiam etiam nunc tempore bonorum sub nomine regis Edwardi juratur, non quod ille statuerit, sed quod observaverit. He commanded all laws made by the antient kings to be kept, especially those of Ethelred, to which the kings swear under name of king Edward's laws, not that he made them, but observed them. And under this name have they been humbly desired by the subject, granted with qualification, and controverted, as a main and first part of liberty, in the next age, following the Norman conquest.

Illustrations on the twelfth song.

Taking her progress into the land, the muse comes southward from *Cheshire* into adjoining *Stafford*, and that part of *Shropshire*, which lies in the *English* side, east from *Severn*.

§. And into lesser streams the spacious current cut.

In that raging devastation over this kingdom by the *Danes*, they had gotten divers of their ships fraught with provision out of *Thames* into the river *Lee* (which divides *Middlesex* and *Essex*) some xx miles from *London*; *Alfred*, holding his tents near that territory, especially to prevent their spoil of the instant harvest, observed, that by dividing the river, then navigable between them and *Thames*, their ships would be grounded, and themselves bereft of what confidence their navy had promised them. He thought it, and did it, by parting the water into three channels. The *Danes* betook themselves to flight, their ships left as a prey to the *Londoners*.

§. Her lords embraces woud she never more would know.

This *Alfred* left his son *Edward* successor, and, among other children, this *Elfred*, or *Ethelred* his daughter, married to *Ethelred*, earl of *Mercland*. Of *Alfred*'s worth and troublesome reign, because here the author leaves him, I offer you these of an antient *English* wit:

*Nobilitas innata tibi probitatis honorum
Armipotens Alfrede dedit, probitasque laborum,
Perpetuumque labor nomen. Cui mixta dolori
Gaudia semper erant, spes semper mixta timori.
Si modo victor eras, ad crastina bella pavebas.
Si modo victus eras, ad crastina bella parabas.
Cui vestes sudore jugi, cui sica cruroe
Tincta jugi, quantum sit onus regnare probantur.*

Huntington cites these as his own; and if he deal plainly with us (I doubted it, because his

¹ Marsh. West. fol. 306.

² Ingulph. hist. Crowland.

³ Thorp. 17 Ed. III. fol. 46. b.

⁴ Bract. lib. 3. tract. de

coronap. 10. Quam plurimi casus in annis Ed. III. & 4. Jacob. apud dom. Ed. Cok. lib. 6. fol. 77. maxime vero hoc faciunt iunera illa Hen. III. & Ed. I.

⁵ Polydore. hist. 1.

⁶ Eilred. Rhivallent. ap. Took. in charismat. sanar. cap. 6.

⁷ De gest. reg. 2. cap. 11.

mf. epigrams, which make in some copies the xi and xii of his history, are of most different strain, and seem made when *Apollo* was either angry, or had not leisure to overlook them) he shews his muse (as also in an other written by him upon *Edgar*, beginning, *Auctor opum, vindex scelerum largitor honorum*, &c.) in that still declining time of learning's state, worthy of much precedence. Of *Ethelred* in *William of Malmesbury*, is the *Latin* of this *English*: *She was the love of the subject, fear of the enemy, a woman of a mighty heart, having once endured the grievous pains of child-birth, ever afterward denied her husband those sweeter desires; protesting, that, yielding indulgence towards a pleasure, having so much consequent pain, was unseemly in a king's daughter*. She was buried at *S. Peter's* in *Glocester*; her name loaden by monks with numbers of her excellencies.

§. For *Constantine* their king, an hostage hither brought.

After he had taken *Wales* and *Scotland* (as our historians say) from *Howel* (*Malmesbury* calls him *Ludwal*) and *Constantine*; he restored presently their kingdoms, affirming, that, *it was more for his majesty to make a king than be one*. The *Scottish*^b stories are not agreeing here with ours; against whom *Buchanan* storms, for affirming what I see now how he is so well able to confute, as they to justify. And for matter of that nature, I rather send you to the collections in *Ed. I.* by *Thomas of Walsingham*, and thence for the same and other to *Ed. Hall's Hen. VIII.*

§. A *Neptune*, whose proud sails the British ocean sweep.

That flower and delight of the *English* world, in whose birth-time *S. Dunstan* (as is^c said) at *Glastenbury*, heard this angelical voice,

To holy church and to the Lord pays is pboze and bliss

By thulke child's time, that nouth pboze is.

(among his other innumerable benefits and royal cares) had a navy of *cio cio cio de fail*; some say *cio cio cio cio*; which by tripartite division in the east, west, and northern coasts, both defended what was subject to pirates rapine, and so made strong his own nation against the enemies invasion.

§. By civil stepdames bate to death was lastly done.

Edgar had by one woman (his greatest stains shewed themselves in this variety and unlawful obtaining of lustful sensuality, as stories will tell you, in that of earl *Ethelwald*, the nun *Wulftrith*, and the young lais of *Andover*) called *Egelfled*, surnamed *Eneð*, daughter to *Odmer* a

great nobleman, *Edward*; and, by queen *Elfrith*, daughter to *Orgar*, earl of *Devonshire*, *Ethelred* of some vii years age at his death. That *Egelfled* was a professed^d nun, some have argued, and so make *Ethelred* the only legitimate heir to the crown; nor do I think that, except *Alfrith*, he was married to any of the ladies, on whom he got children. *Edward* was anointed king (for in those days was that use of anointing among the *Saxon* princes, and began in king *Alfred*) but not without disliking grudges of his stepmother's faction, which had nevertheless in substance, what his vain name only of king pretended; but her bloody hate, bred out of womanish ambition, straining to every point of sovereignty, not thus satisfied, compelled in her this cruelty. King *Edward* not suspecting her dissembled purposes, with simple kindness of an open nature, wearied after the chase in *Purbeck* ile in *Dorsetshire*, without guard or attendance, visits her at *Corfe Castle*; she, under sweet words and saluting kisses, palliating her hellish design, entertains him; but while he being very hot and thirsty (without imagination of treason) was in pledging her, she, 'or one of her appointed servants, stabbed the innocent king. His corps, within little space expiring its last breath, was buried at *Warham*, thence afterward, by *Alfer* earl of *Mercland*, translated into *Shaftsbury*, which (as to the second song I note) was hereby for a time called^e *S. Edward's*. Thus did his brother-in-law *Ethelred* (according to wicked *Elfrith's* cruel and traitorous project) succeed him. As, of *Constantine* Copronymus, the *Greeks*, so, of this *Ethelred*, is affirmed, that, in his holy tincture he abused the font with natural excrements, which made *S. Dunstan*, then christening him, angrily exclaim, *Per Deum & matrem ejus ignavus homo erit*; *By God and his mother, he will be a slovenly fellow*. Some ten years of age was he, when his brother *Edward* was slain, and, out of childish affection, wept for him bitterly; which his mother extremely disliking, being author of the murder only for his sake, most cruelly beat him herself with^f an handful of wax.

— candle long and tobe

* *Pro ne bilueo nocti ar he lay at bir i bet pswore :*
Wit thou this child afterward such bir mon as he was
Was the woe man he i psep candle boz this cas. i

* *Sle.*

† *Feet in woe.*

‡ *Saw.*

But I have^h read it affirmed, that *Ethelred* never would endure any wax candles, because he had seen his mother unmercifully with them whip the good *S. Edward*. It is not worth one of the candles, which be the truer; I incline to the first. To expiate all, the afterward built two nunneries, one at *Werwel*, the other at *Ambsbury*; and, by all means of penitence and satisfaction, (as the doctrine then directed) endeavoured her freedom out of this horrible offence.

^b *McClor Boeth. lib. 11. & Buchanan hist. 6. reg. 15.*

hist. 4.

^c *Vide Malmesb. lib. 2. cap. 9. & Huntingdon. hist. 5.*

^d *Vit. S. Edwardi apud Ranulph Cestren. lib. 6.*

^e *Rob. Glocestrenf.*

^f *Ex Oserno in vita Dunstan. For. ecclef.*

^g *Malmesb. lib. de pontific. a.*

^h *Rob. Glo.*

5. *And in one night the throats of all the Danish cut.*

History, not this place, must inform the reader of more particulars of the *Danes*; and let him see to the first song. But for this slaughter, I thus ease his inquisition. *Ethelred* (after multitudes of miseries, long continued through their exactions and devastations, being so large, that XVI shires had endured their cruel, and even conquering spoils) in the *XXIII*. of his reign, strengthened with provoking hopes, grounded on alliance, which, by marriage with *Emma*, daughter of *Richard I.* duke of *Normandy*, he had with his neighbour potentate, sent privy letters into every place of note, where the *Danes* by truce peaceably resided, to the *English*, commanding them, all as one, on the self same day and hour appointed (the day was *St. Brictius*, that is, the *XXII*. of *November*) suddenly to put them, as respective occasion best fitted, to fire or sword; which was performed.

A chronological order and descent of the kings here included in Wrekin's song.

A. CHR.

DCCC. *Egbert*, son to *Inegild* (others call him *Albmund*) grandchild to king *Ine*. After him scarce any, none long, had the name of king in the isle, but governors or earls; the common titles being *duces*, *comites*, *consules*, and such like; which in some writers, after the conquest, were indifferent names, and *William I.* is often called earl of *Normandy*.

DCCC.XXXVI. *Ethelulph*, son to *Egbert*.
DCCC.LV. *Ethelbald*, and *Ethelbert*, sons to *Ethelulph*, dividing their kingdom, according to their fathers testament.

DCCC.LX. *Ethelbert* alone, after *Ethelbald's* death.

DCCC.LXVI. +. *Ethelred*, third son of *Ethelulph*.

DCCC.LXXI. -- *Alfred*, youngest son to *Ethelulph*, brought up at *Rome*; and there in *Ethelred's* life-time, anointed by *PP. Leo IV.* as in ominous hope of his future kingdom.

DCCCC.I. *Edward I.* furnished in story *senior*, the elder, son to *Alfred*.

DCCCC.XXIV. *Albelflan*, eldest son to *Edward*, by *Egwine*, a shepherd's daughter; but, to whom beauty and noble spi-

rit denied, what base parentage required. She, before the king lay with her, dreamed (you remember that of *Olympias*, and many such like) that out of her womb did shine a moon, enlightening all *England*, which in her birth (*Albelflan*) proved true.

DCCCC.XL. --- *Edmund I.* son of *Edward* by his queen *Edgiva*.

DCCCC.XLVI. *Edred*, brother to *Edmund*.

DCCCC.LV. -- *Edwy*, first son of *Edmund*.

DCCCC.LIX. -- *Edgar*, second son of *Edmund*, *Honor ac deliciae Anglorum*. The minion of his subjects.

DCCCC.LXXV. *Edward II.* son to *Edgar*, by *Egelsf*, murdered by his step-mother *Alfritb*, and thence called *St. Edward*.

DCCCC.LXXIX. *Ethelred II.* son to *Edgar*, by queen *Elfrith*, daughter to *Orgar*, earl of *Devonshire*.

CX.XVI. *Edmund II.* son to *Ethelred*, by his first wife *Elfgive*, furnished *Ironside*.

Between him and *Cnut*, or *Canutus the Dane*, son to *Swaine*, was that intended single combat; so by their own particular fortunes, to end the miseries which the *English* toil bore reck'ded in very great characters, written with streams of her childrens blood. It properly here breaks off; for (the composition being, that *Edmund* should have his part *Wessex*, *Essex*, *Eftangle*, *Middlesex*, *Surrey*, *Kent*, and *Sussex*; and the *Dane*, (who durst not fight it out, but first moved for a treaty) *Mercland* and the northern territories) *Edmund* died the same year, (some report was, that traitorous *Edrick Streona*, earl of *Mercland*, poisoned him) leaving sons, *Edmund* and *Edward*; but they were, by *Danish* ambition and traitorous perjury of the unnatural *English* state, disinherited, and all the kingdom cast under *Cnut*. After him reigned his son *Harold I. Lightfoot*, a shoemaker's son (but dissembled, as begotten by him on his queen *Alfgive*) then, with *Harold*, *Hardcnut*, whom he had by his wife *Emma*, king *Ethelred's* dowager. So that from *Edmund*, of *Saxon* blood, (to whose glory *Wrekin* hath dedicated his endeavour; and therefore should transcend his purpose, if he exceeded their empire) until *Edward* the Confessor, following *Hardcnut*, son to *Ethelred*, by the same queen *Emma*, the kingdom continued under *Danish* princes.

Illustrations on the thirteenth song.

INTO the heart of *England* and *Wales*, the music here is entered, that is, *Warwickshire*, her native country; whose territory you might call

* See to the last song before, because in *Wessex* all the rest were at last confounded. These are most commonly written kings of *Wessex*, although in fiction only, (as it were) or, as the civilians call it, direct property, all the other provinces (except some northern ones) which the *Danes* usually possessed, were theirs.

& *Edred* and *Albelflan* scribit progenator.

! Male enim & inepte *Venerandi* sequax *Hector* sic *Boeth.* lib. 11, qui *Edm.*

! *Marian. Scot.* & *Florent. Wigorn.*

Middle-Engle (for here was that part of *Merc-land*, spoken of in *Story*) for equality of distance from the inarming ocean.

§. *By her illustrious earls renowned every where.*

Permit to yourself credit of those, loaden with antique fables, as *Guy*, (of whom the author in the twelfth song, and here presently *Morind*, and such like, and no more testimony might be given, to exceed. But, more sure justification hereof is, in those great princes *Henry Beauchamp* earl of *Warwick*, and *præcomes Angliæ*, chief earl of England, (as the record calls him) under *Hen. VI.* and *Richard Nevil*, making, as it were, his gain to crown and depose kings, in that bloody dissension betwixt the white and red roses.

§. *That mighty Arden held—*

What is now the *Woodland* in *Warwickshire*, was heretofore part of a larger weald or forest called *Arden*. The relics of whose name in *Dene* of *Monmouthshire*, and that *Arduenna* or *la forest d'Ardenne*, by *Hennault* and *Luxemburg*, shews likelihood of interpretation of the yet used *English* name of *Woodland*. And, whereas, in old inscriptions,^m *Diana nemorensis*, *Diana of the wood*, with other additions, hath been found among the *Latins*, the like seems to be expressed in an old marble, now in *Italy*,ⁿ graven under *Domitian*, in part thus:

DIS. MANIBUS.
Q. CAESII. Q.F. CLAUD.
ATILIANUS. SACERDOS.
DEANAE. ARDUINAE.

To the separated souls,
Q. Cæsius, &c.
Priest of *Diana*
Of *Arden*, or surnamed *Arden*.

That comprehensive largeness which this *Arden* once extended (before ruin of her woods) makes the author thus limit her with *Severn* and *Trent*. By reason of this her greatness joined with antiquity, he also made choice of this place for description of the chafe, the *English* similes, and hermit, as you read in him.

§. *And thither wisely brought that goodly virgin band.*

Sufficient justification of making a poem, may be from tradition, which the author here uses; but see to the eighth song, where you have this incredible number of virgins, shipt at *London*; nor skills it much on which you bestow your faith, or if on neither. Their request (as the genius prayer) a re the author's own fictions, to come to express the worth of his native soil's city.

§. *By Leofric, her lord, yet in base bondage held.*

The ensuing story of this *Leofric* and *Godiva* was under the Confessor. I find it reported in *Matthew of Westminster*, that, *Nuda equum ascendens, crines capitis & tricas dissolvens, corpus suum totum, præter crura candidissima, inde velavit: As she was on horseback, her hair loose hung so long, that it covered all her body, to her thighs.* This *Leofric* (buried at *Covenstry*) was earl of *Leicester*, not *Chester*, (as some ill took it by turning *Legecestra*, being indeed sometimes for *Chester*, of old called *urbis legionum*, as to the eleventh song already) which is, without scruple, shewed in a ° charter, of the manor of *Spalding* in *Lincolnshire*, made to *Wulfat* abbot of *Crowland*, beginning thus; *Ego Thoroldus de Buckenbale coram nobilissimo domino meo Leofrico comite Leicestriae, & nobilissima comitissa sua domina Godiva sorore mea, & cum consensu & bona voluntate domini & cognati mei comitis Algar primogeniti & heredis eorum, donavi, &c.* This *Algar* succeeded him; and, as a special title, government and honour, this earldom was therein among the *Saxons* so singular, that it was hereditary with a very long pedigree, till the conquest, from king *Ethelbald*'s time, above ccc years. In *Malmesbury*, he is stiled earl of *Hereford*; and, indeed, as it seems, had large dominion over most part of *Mercland*, and was a great protector of good king *Edward*, from ambitious *Godwin*'s faction. You may note in him what power the earls of those times had for granting, releasing, or imposing liberties and exactions, which since only the crown hath, as inseparably annexed to it. Nay, since the *Normans*, I find that ° *William Fitz-Osbern*, earl of *Hereford*, made a law in his county, *Ut nullus miles pro qualicunque commissio plus septem solidis solvat: That no knight should be amerced above seven shillings*; which was observed without controversy, in *Malmesbury*'s time; And I have seen original letters of protection (a perfect and uncommunicable power royal) by that great prince *Richard* earl of *Poitiers* and *Cornwal*, brother to *Hen. III.* sent to the sheriff of *Rutland*, for, and in behalf of a nunnery about *Stamford*; and it is well known, that his successor, *Edmund*, left no small tokens of such supremacy in constitutions, liberties, and imposed subsidies, in the stannaries of *Cornwal*; with more such like extant in monuments. But whatsoever their power heretofore was, I think it ceased with that ° custom of their having the third part of the king's profit in the county, which was also in the *Saxon* times usual, as appears in that, *In Ipswich regina Edeva duas partes habuit & comes Guert tertiam*; *Norwich reddebat xx. libras regi, & comiti x. libras*: Of the borough of *Lewes*; its profits *erant duae partes regis, tertia comitis*; & *Oxford reddebat regi xx.*

^l Parl. rot. 23 Hen. VI. ap. Cam.
part 2. lib. 3. cap. 11.
Bello ap. Camd.

^m Hubert. Goltz. thesaur. in Aris.
ⁿ Ingulphus hist. tol. 519.
^o Lib. Domesday in scaccario.

[°] Jul. Jacobson. ap. Paul. Merul. cosmog.
[°] Malmcib. de goth. reg. 1.
[°] Lib. veruill. monast. de

libras,

libras, & sex sextarios mellis, comiti vero Algaro x. libras. And under king John, *Geoffrey Fitz-Peter*, earl of *Essex*, and *William le Marshall*, earl of *Strigul*, *administrationem suorum comitatuum habebant; had rule of their counties*,¹ *saith Hoveden*; but time hath, with other parts of government, altered all this to what we now use.

§. *A witness of that day we won upon the Danes.*

He means *Rollrich* stones in the confines of *Warwick* and *Oxfordshire*; of which the vulgar there have a fabulous tradition, that they are an army of men, and I know not what great general amongst them, converted into stones; a tale not having his superior in the rank of untruths. But (upon the conceit of a most learned man) the muse refers it to some battel of the *Danes*, about the time of *Rollo's* piracy and incursion, and for her country takes the better side (as justifiable as the contrary) in affirming the day to the *English*. But, to suppose this a monument of that battel, fought at *Hochmorton*, seems to me, in matter of certainty, not very probable; I mean, being drawn from *Rollo's* name: Of whose story, both for a passage in the last song, and here, permit a short examination. The *Norman*² tradition is, that he, with divers other *Danes* transplanting themselves, as well for discussion betwixt him and his king, as for new fear of habitation, arrived here, had some skirmishes with the *English*, defending their territories; and soon afterward being admonished in a dream, aided and advised by king *Athelstan*, entered *Seine* in *France*; walled and won part of it about *Paris*, *Baieux*, elsewhere, returned, upon request by embassy, to assist the *English* king against rebels; and afterward in the year *deccc.xi.* or *xii.* received his dukedom of *Normandy*, and christianity, his name of *Robert*, with *Egidia* or *Gilla* (for wife) daughter to *Charles*, furnished the *simple*; as to the fourth song, I have, according to the credit of the story, touched it. But how came such habitude betwixt *Athelstan* and him, before this *deccc.xii.* when, as it is plain, that *Athelstan* was not king till *deccc.xxiv.* or near that point? Neither is any concordance betwixt *Athelstan* and this *Charles*, whose kingdom was taken from him by *Rodulph*, duke of *Burgundy*, two years before our king *Ed. I.* (of the *Saxons*) died. In the ninth year of whose reign, falling under *deccc.vi.* was that battel of *Hochmorton*; so that, unless the name of *Athelstan* be mislook for this *Edward*, or, be wanting to the dominical year of those *xxii.* of the *Dionysian* calculation (whereof to the fourth song) I see no means to make their story stand with itself, nor our monks; in whom (most of them writing about the *Norman* times) more mention would have been of *Rollo*, ancestor to the

Conqueror, and his ads here, had they known any certainty of his name or wars; which I rather guess to have been in our maritime parts, than inland, unless when (if that were at all) he assisted king *Athelstan*. Read *Frodoard*, and the old annals of *France*, written near the supposed times, and you will scarce find him to have been, or else there under³ some other name; as *Godfrey*, which some have conjectured, to be the same with *Rollo*. You may see in *Æmilius* what uncertainties, if not contrarities, were, in *Norman* traditions of this matter; and, I make no question, but of that unknown nation, so much mistaking hath been of names, and times, that scarce any undoubted truth therein now can justify itself. For, observe but what is here delivered, and compare it with⁴ them which say in *deccc.xviii.* *Rollo* was overthrown at *Chartres* by *Richard* duke of *Burgundy*, and *Ebal* earl of *Poitiers*, assisting *Walzebm* bishop of that city; and, my question is, where have you hope of reconciliation; except only in equivocation of name. For plainly, *Hastings*, *Godfrey*, *Hroruc*, and others (if none of these were the same) all *Danes*, had to do, and that with dominion in *France* about this age, where in it is further reported, that⁵ *Robert* earl of *Paris*, and in some sort a king betwixt *Charles* and *Rodulph*, gave to certain *Normans* that had entered the land at *Loire* (they first⁶ entered there in *deccc.lxi.*) all *Little Bretagne* and *Nants*, and this in *deccc.xxii.* which agrees, with that gift of the same tract to *Rollo* by *Charles*, little better than harshest discords. And so doth that of *Rollo's* being aided by the *English* king, and in league with him against the *French*, with another received truth, which is, that *Charles* was (by marriage with⁷ *Edgith* of the *English* king's loins) son-in-law to *Edward*, and brother-in-law to *Athelstan*, in whose⁸ protection here *Lewis* (afterward the *IV.*) was, while *Rodulph* of *Burgundy* held the crown. For that unmannerly homage also, spoken of to the fourth song by one of *Rollo's* knights, it is reported by *Malmesbury* and others, to be done by *Rollo* himself; and, touching that *Egidia*, wife to *Rollo*, the judicious *French* historiographer, *P. Æmilius* (from whom the *Italian Polydore* had many odd pieces of his best context) tells clearly, that she was daughter to *Lothar*, king of *Romans*, and given by his cousin *Charles the gros*, to *Godfrey* king of *Normans*, with *Welfrich* (that is *Neufria*) about *deccc.lxxxvi.* and imagines that the *Norman* historians were deceived by equivocation of name, mistaking *Charles the simple* for *Charles the gros*, living near one time; as also that they finding *Egidia*, a king's daughter, (being indeed *Lothar's*) supposed her *Charles the simple's*. This makes me think also that of *Godfrey* and *Rollo*, hath been like confusion of name. But both times, reigns, and persons are so disturbed in the stories, that

¹ Et v. Jo. Carnotens. epist. 261. Nicol. vicecomiti Essexie.

de Walsingham in Hypodig. Neut. secundum quos, in quantum ad chronologicam rationem spectat, plerique alii.

apud P. Æmilium hist. Franc. 3. quem de hac re vide & Polydore eiusdem sequacem hist. 6.

saith Hoveden, part 1. fol. 241.

² Frodoard. presbyt. annal. Franc.

³ Membran. vetust. coenob. Floriacens. edit. a P. Pichaco.

⁴ Guil. Gemeticens. de ducib. Norm. 3. cap. 4. & seqq. Thom.

⁵ Ita quidam

⁶ Floren. Wigorn. pag. 127. & Ro-

⁷ Reicherpergens.

⁸ Opus dicta P. Æmi-

being insufficient to rectify the contrarieties, I leave you to the liberty of common report.

Illustrations on the fourteenth song.

SOMEWHAT returning now near the way you descended from the northern parts, the muse leads you through that part of *Worcestershire*, which is on this side *Severn*, and the neighbouring *Stafford*, viewing also *Cotteswold*, and so *Glocester*. The fictions of this song are not so covert, nor the allusions so difficult, but that I presume your conceit, for the most part, willingly discharges my labour.

§. And of her cares repress with her delicious wines.

In this tract of *Glocestershire* (where to this day many places are stiled vineyards) was of ancient time among other fruits of a fertile soil, great store of vines and more than in any other place of the kingdom. Now in many parts of this realm we have some; but what comes of them in the press is scarce worth respect. Long since, the emperor *Probus Gallis, omnibus & Hispanis ac Britannis permittit ut vites haberent vinumque conficerent*; Permitted vines to the Gauls, Spaniards, and Britons, and leave to make wines. But *Tacitus*, before that, speaking of this island commends it with, *Solum præter oleam vitæque, & caetera calidioribus terris oriri sueta, patiens frugum, foecundum; A soil fruitful enough, except of olives and vines, which are for hotter climates*. Long since *Probus*, England had its vineyards also, and some store of wines, as appears by that in *Domejay*, *Vnus & parvus & vi. arpenni vini* (that is between five and six acres; *arpent* in *French* signifying a content of ground of a hundred rods square, every rod *xviii* foot) & *reddit xx. modios vini si bene procedit*; One park and six arpens of vineyard, and brings forth some xx firkins of wine, if the year prove well, being recorded of a place ^c by *Raleigh* in *Essex*. This was under *William I.* and since him in time of *Hen. I.* ^f much wine was made here in *Glocestershire*. That now the isle enjoys not frequency of this benefit, as in old time, whether it be through the soil's old age, and so like a woman growing sterile; as ^g in another kind *Tremellius*, many hundred years hence thought; or by reason of the earth's change of place, as upon difference in astronomical observations *Stadius* guessed, or that some part of singular influence, whereon astrology hangs most of inferior qualities, is altered by that slow course (yet of great power in alteration of heaven's system) of the eighth sphere, or precession of the equinoctial, or by reason of industry wanting in the husbandman, I leave it to others examination.

§. — *Still falling southward leaves.*

He alludes to the difference of the zodiac's obliquity from what it was of old. For in *Ptolemy's* time, about *c13.cd.lx.* years since, the

utmost declination of the sun in the first of *Cancer*, where he is nearest to our vertical point, was *xxiii.* gr. and about *l.ii.* min. Since that, *Albategni*, about *Charlemagne's* time, observed it some *xv.* scruples less; after him, near *c13.* of *Christ*, *Arzachel* found it *xxiii.* gr. *xxxiv.* scr. and in this later age, *John of Coningsburg* and *Copernicus* ^h brought it to *xxiii* gr. *xxviii.* scr. which concords also with the *Prutenick* account, and as many as thence traduce their *Ephemerides*. So that, by this calculation, about *xxiiii.* min. the sun comes not now so near our *Zenith*, as it did in *Ptolemy's* time. But in truth (for in these things I account that truth, which is warranted by most accurate observation; and those learned mathematicians, by omitting of parallax and refractions, deceived themselves and posterity) the declination in this age is *xx.ii.* gr. *xxx. i.* scrup. and a half, as that noble *Dane*, and most honoured restorer of astronomical motions, *Tycho Brahe*, hath taught us; which although it be greater than that of *Copernicus* and his followers, yet is much less than what is in *Ptolemy*; and by two scruples different from *Arzachel's*. So justifying the author's conceit, supposing the cause of our climates not now producing wines, to be the sun's declination from us, which for every scruple answers in earth, about one of our miles; but a far more large distance in the celestial globe. I can as well maintain this high fetched cause, being upon difference of so few minutes in one of the slowest motions; and we see that greatest effects are always attributed to them, as upon the old conceit of the *Platonick* year, abridged into near his half by *Copernicus*, those consequences foretold upon the change of ⁱ eccentricicks out of one sign into another, the equinoctial precession, and such like; as others may their conversion of a planet's state into *fortunate, oppressed or combuss*, by measuring or missing their *xvi.* scruples of *Cazimi*, their *orbes mixti*, and such curiosities. Neither can you save the effect of this declination, by the sun's much nearer approach to the earth, upon that decrease of his eccentricity, which *Copernicus* and his followers have published. For, admitting that were true, yet judicial astrology relies more upon aspect and beams falling on us with angles, which are much altered by this change of obliquity in the zodiac, than distance of every singular star from the earth. But indeed, upon mistaking the poles altitude, and other error in observation, ^k *Copernicus* was deceived, and in this present age the sun's eccentricity (in *Ptolemy*, being the *xxiv.* of the eccentric's semidiameter, divided into *lx.*) hath been ^l found between the *xxvii.* and *xxviii.* p. which is far greater than that in *Copernicus*, erroneously making it but near the *xxxi.* But this is too heavenly a language for the common reader; and perhaps too late I leave it.

^c Flav. Vopiscus in *cjald.* vita.

^d In Jul. Agricola,

^e Camd. in *Trinobantibus*.

^f Malmesb. de pontificum gestis 4.

^g Ap. Columel. de re rustic. 2. cap. 1.

^h Copernic. re. 3. cap. 3.

ⁱ Cardan. ad 2. Terribilis & de varietat. rer. 2. qui pro-

phane nimium, a moribus octavar. spheræ, ita scilicet quos circa *c13.cdccc.* contrario velut fieri modo supponit sacrosanctæ religionis mutationem inapte simul & impie prædixit, & bujus generis cæcæcæ.

^k Cui, hoc nomine, graviter imitatus est Jul. Scalig. exercit. 90. §. 2.

^l Tycho Brahe in *prognosticam*.

Illustrations on the fifteenth song.

I Shall here be shorter than in the last before, the muse is so full in herself, employed wholly about the nuptials of *Tame* and *Isis*. In the garlands of *Tame* are wreathed most of our English field-flowers: In them of *Isis*, our more sweet and those of the garden. Yet upon that,

S. The garter's royal seat, from him who did advance.

I cannot but remember the institution, (touched to the fourth song) of this most honourable order, dedicated to St. George in xxiv. Ed. III. It is yearly at this place celebrated by that noble company of xxvi. Whether the cause were upon the word of *garter* given in the French wars among the English, or upon the queen's, or countess of Salisbury's *garter* fallen from her leg, or upon different and more ancient original whatsoever, know clearly (without unlimited affectation of your country's glory) that it exceeds in majesty, honour, and fame, all chivalrous orders in the world; and (excepting those of *Templars*, St. *James*, *Calatrava*, *Alcantara*, and such like other, which were more religious than military) hath precedence of antiquity before the eldest rank of honour, of that kind any where established. The *Annuciada* (^a instituted by *Amadeus* VI. earl of *Savoy*, about c13. cccc. ix although others have it by *Amadeus* IV. and so create it before this of the *garter*) and that of the golden fleece, by *Philip* duke of *Burgundy* c13. cccc. xxix. of *S. Michael* by *Lewis* XI. *Della Banda*, by *Alfonso* of *Spain*, and such-like, ensued it, as imitating in situations, after a regard of the far extended fame, worth, and glory, of *S. George's* knights.

Illustrations on the sixteenth song.

IN wandering passage the muse returns from the wedding, somewhat into the land, and first to *Hartford*; whence, after matter of description, to *London*.

S. Thou saw'st when Ver'lam once her head aloft did bear.

For, under *Nero*, the Britons intolerably loaden with weight of the Roman government, and especially the *Iceni*, now *Norfolk* and *Suffolk* men, provoked by that cruel servitude, into which, not themselves only, but the wife also and posterity of their king *Prasutagus* were, even beyond right of victory, constrained; at length breathing for liberty (and in a further continuance of war having for their general *R. Bonduca*, *Bunduica*, or as the difference of her name is) rebelled against their foreign conqueror, and in martial opposition committing a slaughter of no less than Lxxx m. (as *Dio* hath, although *Tacitus* misleth cccx. of this number)

ransacked and spoiled *Maldon*, then *Camalodunum*, and also this *Verulam*, near *St. Albans*, which were the two ^a chief towns of the isle; the first a colony, (whereof the eighth song) this a municipal ^b city, called expressly in a catalogue at the end of *Nennius*, *Caer-municip*. Out of ^c *Agellius* I thus note to you its nature. *Municipes sunt cives Romani ex municipiis suo jure & legibus suis utentes, muneris tantum cum pop. Rom. honorarii participes, a quo munere capeffendo appellati videntur; nullis aliis necessitatibus neque ulla pop. Rom. lege astricti, quum nunquam pop. Rom. eorum fundus sacrus esset.* Such as lived in them were free of Rome, but using their own laws, capable only of honorary titles in the Roman state, and thence had their name. It differed from a colony, most of all in that a colony was a progeny of the city, and this of such as were received into state favour and friendship by the Roman. Personating the genius of *Verulam*, that ever famous ^d *Spencer* sung,

*I was that city, which the garland wore
Of Britain's pride, delivered unto me
By Roman victors, which it won of yore;
Though nought at all but ruins now I be,
And lie in mine own ashes, as ye see:
Verlam I was; What boots it that I was,
Sith now I am but weeds and wassful grafts?*

As under the Romans, so in the Saxon times afterward it endured a second ruin; and out of its corruption, after the abbey erected by king *Offa*, was generated that of *St. Albans*; whither, ^e in later times most of the stone-works, and whatsoever fit for building was by the abbots traslated. So that,

— 'Now remains no memory,
Nor any little monument to see,
By which the traveller that fares that way,
This once was she, may warned be to say.

The name hath been thought from the river there running, called *Ver*, and *Hampbrey*; ^f *Lhud* makes it, as if it were *Celtic*, i. e. a church upon *Ver*.

*S. Thou saw'st great burthen'd ships through
these thy walls pass.*

Lay not here unlikelihoods to the author's charge; he tells you more judiciously towards the end of the song. But the cause why some have thought so, is, for that, ^g *Gildas*, speaking of *St. Alban's* martyrdom and his miraculously passing through the river at *Verlamestre*, calls it *iter ignotum trans Thamefis fluvii alveum*, an unknown passage over *Thames*; so by collection they guessed that *Thames* had then his full course this way, being thereto further moved by anchors, and such like, here digged up. This conjecture hath been followed by that ^h noble muse thus in the person of *Verulam*;

And

^a V. Aubert. *Mir. orig.* equet. 2. cap. 4. & *Savinien*. orig. de cavaliers.

Tacit. annal. 14.

ubi supra.

^b Noct. *Antic.* 16. cap. 12.

^c In brev. Brit.

^d In his ruins of time.

^e In epist. de *Excid. Britan.*

^f Sueton. lib. 6. cap. 19.

^g Leland. ad *cyg.* Cant.

^h *Spencer.*

ⁱ Municipium

^j *Spence.*

And where the crystal Thamis wont to slide
In silver channel down along the lee,
About whose flowery banks on either side
A thousand nymphs, with mirthful jollity,
Were wont to play from all annoyance free:
There now no rivers course is to be seen,
But moorish fens, and marshes ever green.

There also where the winged ships were seen,
In liquid waves, to cut their foamy way;
A thousand fishers numbed to have been
In that wide lake, looking for plentiful prey
Of fish, with baits which they us'd to betray,
Is now no lake, nor any fishers store,
Nor ever ship shall sail there any more.

But, for this matter of the *Thames*, those two great antiquaries, *Leland* and *Camden*, have joined in judgment against it; and for the anchors, they may be supposed of fish boats in large pools, which have here been; and yet are left relics of their name.

§. Since us his kingly ways *Molmutius* first began.

Near 9. years before our Saviour, this king *Molmutius* (take it upon credit of the *British* story) constituted divers laws; especially, that churches, ploughs, and highways should have liberties of sanctuary, by no authority violable. That churches should be free and enjoy liberty for refuge, consenting allowance of most nations have tolerated, and in this kingdom (it being affirmed also by a constitution of ⁷ king *Lucius* a christian) every church-yard was a sanctuary, until by act ² of parliament under *Hen. VIII.* that licence for protection of offences, being too much abused, was taken away; but, whether now restored in the last ³ parliament, where in all statutes concerning abjuration, or sanctuary made before 35 *Eliz.* are repealed, I examine not. The plough and husbandmen have, by our ⁴ statutes, and especially by ⁵ civil and ⁶ *Persian* law, great freedoms. Highways, being without exception, necessary, as well for peace as war, have been defended in the *Roman* ⁷ laws, and are taken in ours, to be in that respect (as they are by implication of the name) *the king's highways*, ⁸ and *res sacrae*; & *qui aliquid inde occupaverit excedendo fines & terminos terrae suae, dicitur fecisse purpresturam super ipsum regem*. Privileged places; and he which trespasses there, commits *purpresture* upon the king. According to this privilege of *Molmutius*, in the statute of *Marlebridge*, ⁹ it is enacted, that none should distrain in the king's highway, or the common street, but the king and his ministers, *specialem auctoritatem ad hoc habentibus*; which I particularly transcribe, because the printed books are therein so generally corrupted by addition of this here cited in *Latin*. You see it alters the law much, and we have divers judgments, that in behalf of the king by common bailiffs, without special authority, di-

stresses may be ¹⁰ taken, as for an amercement in the sheriff's torn or lect, or for parliament knights fees. But the old rolls of the statute, (as I have seen in a fair ms. examined by the exemplification, for the record itself, with many other, lost) had not those words, as the ¹¹ register also specially admonishes, nor is any part of that chapter in some ms. which I marvel at, seeing we have a formal writ grounded upon it. Not much amiss were it here to remember a worse fault, but continually received, in the charter of the forest art. VII. where you read, *Nullus forestarius, &c. aliquam collectam faciat nisi per visum & sacramentum XII. regadatorum quando faciunt regardum. Tot forestarii, &c.* the truth of the best copies (and so was the record) being in this digression *Nullus forestarius, &c. aliquam collectam faciat. Et per visum & sacramentum XII. regadatorum quando faciunt regardum, tot forestarii ponantur, &c.* as, beside authentick ms. it is expressly in the like charter, almost word for word, given first by king *John*, and printed in *Mathew Paris*; betwixt which, and that of ours commonly read, may he be made a time-deferring comparison. Were it not for digression, I would speak of the senseless making of *Boniface*, archbishop of *Canterbury*, witness to the grand charter in 9 *Hen. III.* when, as it is plain, that he was not archbishop till XXV. The best copy that ever I saw, had *Simon* archbishop of *Canterbury*; which indeed was worse, there being no such prelate of that see, in those times; but the mistaking was by the transcriber turning the single *S.* (according to the form of writing in that age) into *Simou* for *Stephen*, who was (*Stephen* of *Langton*) archbishop at that time. But I forget myself in following matter of my more particular study, and return to *Molmutius*. His constitution being general for liberty of highways, controverted grew about the course and limits of them; whereupon his son king *Belin*, to quit the subject of that doubt, caused more specially these four, here presently spoken of, to be made, which might be for interrupted passage, both in war and peace; and hence by the author, they are called *military*, (a name given by the *Romans* to such highways, as were for their marching armies) and indeed by more polite conceit ¹² and judicious authority these our ways have been thought a work of the *Romans* also. But their courses are differently reported, and in some part their names also. The author calls them *Walling street*, the *Fosse*, *Ikinild*, and *Rickeneld*. This name of *Rickeneld*, is in *Randal* of *Chester*, and by him derived from *S. David's* in *Pembroke* into *Hereford*, and so through *Worcester*, *Warwick*, *Derby*, and *York* shires to *Tinmouth*, which (upon the author's credit reporting it to me) is also justifiable by a very ancient deed of lands, bounded near *Birmingham* in *Warwickshire* by *Rickeneld*. To endeavour certainty in them,

⁷ Florilegus.
Ed. I. distrid. fecarail.

⁸ 21 Hen. VIII. cap. 14.

⁹ 1 Jacob. sess. 1. cap. 25.

¹⁰ West. 2. cap. 20. & 21

¹¹ C. quae res pignori oblig. l. 7. executores & alibi.

¹² Xenoph. cyropaed. 2.

¹³ ff. de via public.

¹⁴ ff. de v. arrie. c. 1. cap. 9.

¹⁵ 34 Ed. I. Assens. 233.

¹⁶ Ric. II. ibid. 194.

¹⁷ Hen. IV. fol. 1.

¹⁸ 19 Ed. II. Assens. 211.

¹⁹ 215. alibi.

²⁰ V. Camden Roman.

were but to obtrude unwarrantable conjecture, and abuse time and you. Of *Watling* (who is here personated, and so much the more proper, because *Verulam* was called also, by the *English*, ^m *Watling-Chester*) it is said that it went from *Dover* in *Kent*, and so by west of *London* (yet part of the name seems to this day left in the middle of the city) to this place, and thence in a crooked line through *Shropshire* by *Wrekin* hill into ⁿ *Cardigan*. But ^o others say from *Verulam* to *Chester*. And where all is referred to *Belin* by *Geoffrey ap Arthur*, and *Polychronicon*, another ^p tells you that the sons of (I know not what) king *Wetle* made, and denominated it. The *Fosse* is derived, by one consent, out of *Cornwall* into *Devonshire*, through *Somerset*, over *Cotes-wold* by *Tewksbury*, along near *Coventry*, to *Leicester*, through *Lincoln* to *Berwick*, and thence to *Cathness* the utmost of *Scotland*. Of restitution of the other, you may be desperate, *Rickeneld* I have told you of; in *Henry* of *Huntingdon*, no such name is found, but with the first two, *Ickenild* and *Ermingstreet*. *Ickenild*, faith he, goes from east to west; *Ermingstreet*, from south to north. Another tells me, that *Ermingstreet* begins at *S. David's*, and conveys itself to *Southampton*: which the author hath attributed to *Ickning*, begun (upon the words community with *Icent*) in the eastern parts. It is not my power to reconcile all these, or elect the best; I only add, that, *Ermingstreet* (which being of *English* idiom, seems to have had its name from *Immun*: all in that signification, whereby it ^q interprets an universal pillar, worshipped for *Mercury* president of ways) is like enough (if *Huntingdon* be in the right, making it from south to north) to have left its part in *Stanstreet* in *Surrey*, where a way made with stones and gravel in a soil on both sides very different continues near a mile; and thence towards the eastern shore in *Sussex*, are some places seeming as other relics of it. But I here determine nothing.

Illustrations on the Seventeenth song.

AFTER your travels (thus led by the muse) through the inland, out of the *Welsh* coast maritime, here are you carried into *Surrey* and *Sussex*; the southern shires from *London* to the ocean; and *Thames*, as king of all our rivers, summarily sings the kings of *England*, from *Norman William* to yesterday's age.

S. Mole digs herself a path, by working day and night.

This *Mole* runs into the earth, about a mile from *Dorking* in *Surrey*, and after some two miles, sees the light again; which, to be certain hath been affirmed by inhabitants thereabout reporting trial made of it. Of the river *Deverih*, near *Warmister* in *Wiltshire*, is said as much; and more of *Alpheus's* running out of

Elis (a part of the now *Morea* antiently *Peloponnesus* in *Greece*) through the vast ocean to *Arcthusa* in a little isle (close by *Syracuse* of *Sicily*) called *Ortygia*, and thither thus coming unmixed with the sea, which hath been both tried by a ^r cup, lost in *Elis*, and other stuff of the *Olympian* sacrifices there cast up, and is justified also by express assertion of an old ^s oracle to *Archias*, a *Corinthian*, advising him he should hither deduce a colony.

— In 'Αρχῖου ἑσμεα. Ἐλῶζες, Μολύμανον παγὰν Εὐγεπείας Ἀρεθούας.

There *Alpheus* springeth again, embracing fair *Arcthusa*.

Like this *Pausanias* reckons more; ^t *Erasin* in *Greece*, *Lycus* ^u that runs into *Meander*, ^v *Tiger*, and divers others, some remember for such quality. And *Gnadiana* (the antient limit of *Portugal*, and the *Baetic Spain*) is specially famous for this form of subterranean course; which, although hath been thought fabulous, yet by some learned and judicious of that ^w country, is put for an unfeigned truth.

S. He ever since doth flow beyond delightful Shene.

Mole's fall into *Thames* is near the utmost of the flood, which from the *German* ocean, is about 120 miles, scarce equalled (I think) by any other river in *Europe*. Whereto you may attribute its continuing so long a course, unless to the diurnal motion of the heavens, or moon, from east to west (which hardly in any other river of note falling into so great a sea, will be found so agreeable, as to this, flowing the same way) and to the easiness of the channel being not over creek, I cannot guess. I incline to this of the heavens, because such ^x testimony is of the ocean's perpetual motion in that kind. And whether it be for frequency of a winding, and thereby more resisting shore, or for any other reason judiciously not yet discovered; it is certain, that our coasts are most famous for the greatest differences, by ebbs and floods, before all other whatsoever.

S. Left with his ill got crown unnatural debate.

See what the matter of descent to the 10 song tells you of his title, yet even out of his own mouth, as part of his last will and testament, these words are reported; ^y *I constitute no heir of the crown of England; but to the universal Creator, whose I am, and in whose hand are all things, I commend it. For I had it not by inheritance, but, with direful conflict, and much effusion of blood; I took it from that perjured Harold, and by death of his favourites, have I subdued it to my empire. And somewhat after: Therefore I dare not bequeath the scepter of this kingdom to any but to God alone, least after*

^m Livid. brevior. Brit.

ⁿ Hoveden. part. 1. fol. 148.

^o Pausan. Eliac. 4.

^p Bur. Hist. pan.

^q Polichronic. lib. 1. cap. de plat. reg.

^r Adam Bremen. hist. eccles. cap. 1. and see to the third song.

^s Herodot. hist. 2.

^t Scallig. de subtilit. exercit. 52.

^u Henric. Huntingd. hist. 1.

^v Justin. hist. 42.

^w Idem, 5.

^x Guil. Fitzar. in hist. Cadomenc.

^y Roger

^z Strabo geograph. 1.

^{aa} Ludovic. Nonius in

my

my death, worse troubles happen in it, by my occasion. For my son William (always, as it became him, obedient to me) I wish that God may give him his graces, and that, if so it please the Almighty, he may reign after me. This William II. (called Rufus) was his second son, Robert, his eldest, having upon discontent (taken because the dukedom of Normandy, then as it were by birthright, nearly like the principality of Wales, antiently, or dutchy of Cornwall at this day, belonging to our kings heirs apparent, was denied him) revolted unnaturally and mov'd war against him, aided by Philip I. of France, which caus'd his merited disinheri- tance. Betwixt this William and Robert, as also betwixt him and Henry I. all brothers (and sons to the Conqueror) were divers oppositions for the kingdom and dukedom, which here the author alludes to. Our stories in every hand inform you: And will discover also the Conqueror's adoption by the Confessor, Harold's oath to him, and such institutions of his lawful title enforced by a case* reported of one English, who, deriving his right from feisin before the conquest, recovered by judgment of king William I. the manor of *Sharborn* in Norfolk, against one *Warren* a Norman, to whom the king had before granted it; which had been unjust, if he had by right war only gotten the kingdom; for then had all titles of subjects before, been utterly extinct. But, (admit this case as you please, or any cause of right beside his sword) it is plain, that his will and imperious affection (mov'd by their rebellions which had stood for the sworn Harold) dispos'd all things as a Conqueror: Upon observation of his subjection of all lands to tenures, his change of laws, disinheriting the English, and such other reported (which could be but where the profitable dominion, as civilians call it, was universally acquired into the prince's hand) and in reading the disgraceful account then made of the English name, it will be manifest.

§. Who by a fatal dart in vast New Forest slain.

His death by an unfortunate looting at a dear out of one *Walter Tirrel's* hand in *New Forest*, his brother *Richard* being blasted there with infection, and *Richard*, duke Robert's son, having his neck broken there in a bough's twist catching him from his horse, have been thought as divine revenges on William I. who destroyed in *Hampshire* xxxvi parish churches to make dens for wild beasts; although it is probable enough, that it was for security of landing new forces there, if the wheel of fortune, or change of Mars, should have dispossest him of the English crown. Our stories will of these things better instruct you; but, if you seek *Matthew Paris* for it, amend the absurdity of both the *London* and *Tigurin* prints in *An. c. 110. lxxxv.* and for *rex magnificus & bonae indolis adole-*

scens, read *Rich. magnificus*, &c. for *Richard* brother to this red *William*.

§. Was by that cruel king deprived of his sight.

Thus did the Conqueror's posterity quietly possess their father's inheritance. William had much to do with his brother Robert, justly grudging at his usurping the crown from right of primogeniture; but so much the less, in that Robert with divers other German and French princes left all private respects for the holy war, which, after the cross undertaken, (as those times used) had most fortunate success in recovery of *Palestine*. Robert had no more but the dutchy of Normandy, nor that without swords often drawn, before his holy expedition; about which (having first offer of, but refusing, the kingdom of *Jerusalem*) after he had some five years been absent, he returned into England, finding his younger brother (*Hen. I.*) exalted into his hereditary throne. For, although it were undoubtedly agreed that Robert was eldest son of the Conqueror; yet the pretence which gave Henry the crown (beside the means of his working favourites) was, that he was the only issue born after his father was a king; upon which point, a great question is disputed among civilians. Robert was no sooner returned into Normandy, but presently first animated by *Randal*, bishop of *Durham*, a great disturber of the common peace betwixt the prince and subject by intolerable exactions and unlimited injustice under William II. whose chief justice it seems he was, newly escaped out of prison, whither for those state-misdemeanors he was committed by Henry, he dispatches and interchanges intelligence with most of the baronage, claiming his primogeniture right, and thereby the kingdom. Having thus gained to him most of the English nobility, he lands with forces at *Portsmouth*, thence marching towards *Winchester*; but before any encounter, the two brothers were persuaded to a peace; covenant was made and confirmed by oath of XII barons on both parts, that Henry should pay him yearly c10. c10 pounds of silver, and that the survivor of them should inherit, the other dying without issue. This peace, upon denial of payment (which had the better colour, because, at request of queen *Maud*, the duke prodigally released his c10. c10 pounds the next year after the covenant) was soon broken. The king (to prevent what mischief might follow a second arrival of his brother) assisted by the greatest favours of Normandy and Anjou, besieged duke Robert in one of his castles, took him, brought him home captive, and at length using that course (next secure to death) so often read of in *Choniaters*, *Cantacuzen*, and other oriental stories, put out his eyes, being all this time imprisoned in *Cardiffe* castle in *Glamorgan*, where he miserably breathed his last. It is by *Polydore*

* This is the heaviest underload by whom, which say he devised his kingdom to William II.

¹ Aequi. ad hanc rem conciliari dilucidandum, iure & gentium & Anglicano, visendi sunt Hotoman, visendi sunt Hotoman. illust. quæst. 1. Alberic. Gentili de iure belli. 1. cap. 1. & cas. Calv. in D. Coke lib. 7. Malmerb. For he was born the 111 year after the conquest.

² See to the second song.

³ Hotoman, illust. quæst. 2.

⁴ Antiq. Sched. in Icen. Camd.

⁵ Solus omnium natus esset regie.

⁶ Placitorum, & exactor totius regni.

Flor. Wig. & monachum turba.

added, out of some authority, that king *Henry*, after a few years imprisonment, released him, and commanded that within *xl* days and *xii* hours (these hours have in them time of two floods, or a flood and an ebb) he should, abjuring *England* and *Normandy*, pass the seas as in perpetual exile; and that in the mean time, upon new treasons attempted by him, he was secondly committed, and endured his punishment and death, as the common monks relate. I find no warrantable authority that makes me believe it: Yet, because it gives some kind of example of our obsolete law of abjuration (which it seems had its beginning from one of the statutes published under name of the *Confessor*) a word or two of the time prescribed here for his passage: which being examined upon *Bracton's* credit, makes the report therein faulty. For he seems confident that the *xl* days in abjuration, were afterward induced upon the statute of *Clarendon*, which gave the accused of felony, or treason although quitted by the *ordell* (that is judgment by water or fire, but the statute published, speaks only of water, being the common trial of meaner persons) *xl* days to pass out of the realm with his substance, which to other felons taking sanctuary and confessing to the coroner, he affirms not grantable; although *John le Breton* is against him, giving this liberty of time, accounted after the abjuration to be spent in the sanctuary, for provision of their voyage necessities, after which complete, no man, on pain of life and member, is to supply any of their wants. I know it a point very intricate to determine, observing these opposite authors, and no express resolution. Since then, the oath of abjuration published among our manual statutes nearly agrees with this of duke *Robert*, but with neither of those old lawyers. In it, after the felon confesses, and abjures, and hath his port appointed; *I will* (proceeds the oath) *diligently endeavour to pass over at that port, and will not delay time there above a flood, and an ebb, if I may have passage in that space; if not, I will every day go into the sea up to the knees, assaying to go over, and unless I may do this within forty continual days I will return to the sanctuary, as a felon over my lord the king; so God me help, &c.* So here the *xl* days are to be spent about the passage and not in the sanctuary. Compare this with other authorities, and you shall find all so dissonant, that reconciliation is impossible, resolution very difficult. I only offer to their consideration, which can here judge, why *Hubert de Burgh* (earl of *Kent*, and chief justice of *England* under *Hen. III.*) having incurred the king's high displeasure, and grievously persecuted by great enemies, taking sanctuary, was, after his being violently drawn out, restored; yet that the sheriffs, of *Hereford* and *Essex*, were commanded to ward him there, and prevent all sustenance to be brought him, which

they did, *decernentes ibi XL. dierum excubias observare*. And whether also the same reason, now unknown to us, bred this *xl* days for expectation of embarkment out of the kingdom, which gave it in an other kind for return? As in case of dissolucin, the law hath^a been that the dissolucin could not re-enter without action, unless he had, as it were, made a present and continual claim, yet if he had been out of the kingdom in single pilgrimage, that is, not in general voyages to the holy-land, or in the king's service in *France*, or so, he had allowance of *xl* days two floods, and one ebb, to come home in, and *xv*. days, and *iv*. days, after his return; and if the tenant had been so beyond sea, he might have been esloigned *de ultra mare*, and for a year and a day, after which he had *xl*. days, one flood, and one ebb (which is easily understood as the other for two floods) to come into *England*. This is certain, that the space of *xl*. days (as a year and a day) hath had with us divers applications, as in what before, the *assise of freshforce* in cities and boroughs, and the widows *quarentine*, which seems to have had beginning either of a deliberative time granted to her, to think of her conveniency in taking letters of administration, as in an other^b country, the reason of the like is given; or else from the *xl*. days in the esloign of child birth allowed by the *Norman* customs. But you mislike the digression. It is reported, that when *William the Conqueror* in his death-bed, left *Normandy* to *Robert*, and *England* to *William* the red, this *Henry* asked him what he would give him, *cic. pounds of silver* (saith he) *and he contented, my son; for, in time, thou shalt have all which I possess, and be greater than either of thy brethren.*

§. His sacrilegious hands upon the churches laid.

The great controversy about electing the archbishop of *Canterbury* (the king, as his right bad him, commanding that *John* bishop of *Norwich* should have the prelacy, the pope, being *Innocent III.* for his own gain, aided with some disloyal monks of *Canterbury*, desiring, and at last consecrating *Stephen of Langton*, a cardinal) was first cause of it. For king *John* would by no means endure this *Stephen*, nor permit him the dignity after his unjust election at *Rome*, but banished the monks and stoutly menaces the pope. He presently makes delegation to *William* bishop of *London*, *Eustace of Ely*, and *Malgere of Worcester*, that they should, with monitory advice, offer perswasion to the king of conformity to the *Romish* behest; if he persisted in constancy, they should denounce *England* under an interdict. The bishops tell king *John* as much, who suddenly, moved with imperious affection and scorn of papal usurpation,^c swears, *By God's tooth, if they or any other, with unadvised attempt, subject his kingdom to an interdict, he would presently drive every prelate,*

^a Hen. II. ap. Rog. Hoved. fol. 314.

^b Glanvil lib. 14. cap. 1. cæterum, si placet, adeas Janam nostrum lib. 2. §. 67. f. 169. North. §. Ed. III. coron. 312. 1289. ap. Br. tit. coron. 181. v. Stamfordum lib. 2. cap. 40. qui de his graviter, & modeste, sed accuratè.

^c Math. Par. pag. 507.

v. de consuetudine in Oxonia 21 Ed. III. fol. 46. b.

^d Bract. lib. 4. tract. assis. nov. dist. cap. 5. & lib. 5. tract. de effion. cap. 1.

^e Cust. generaux de Artois art. 164.

^f 9 Johan. reg.

and priest of England to the pope, and confiscate all their substance, and of all the Romans amongst them, he would first pull out their eyes, and cut off their noses, and then send them all packing; with other like threatening terms, which notwithstanding were not able to cause them desist; but within little time following, in public denunciation, they performed their authority; and the king, in some sort, his threatenings; committing all abbeyes and priories, to laymens custody, and compelling every priest's concubine to a grievous fine. Thus for a while continued the realm without divine sacraments, or exercise, excepted only confession, extreme unction, and baptism; the king being also excommunicated, and burials allowed only in highways and ditches, without ecclesiastick ceremony, and (but only by indulgence procured by archbishop Langton which purchased favour that in all the monasteries, excepting of *Whitefriars*, might be divine service once a week) had no change for some four or five years, when the pope in a solemn council of cardinals, according to his pretended plenary power, deposed king John, and immediately by his legate Pandulph offered to Philip II. of France the kingdom of England. This with suspicion of the subjects heart at home, and another cause then more esteemed than either of these, that is, the prophecy of one Peter an hermit in *Torkshire* foretelling to his face, that before *Holy-Thurday* following he should be no king, altered his stiff and resolute, but too disturbed affections; and persuaded him, by oath of himself and sixteen more of his barons, to make submission to the church of Rome, and condescended to give for satisfaction, 112. 112. 112. pounds sterling (that name of *sterling* began, as I am instructed, in time of Henry II. and had its original name from some *Esterling*, making that kind of money, which hath its essence in particular weight and fineness, not of the *starling* bird, as some, nor of *Sterling* in Scotland, under Ed. I. as others absurdly; for in records, much more ancient, the express name *sterlingorum* I have read) to the clergy, and subject all his dominions to the pope; and so had absolution, and after more than four years release of the interdict. I was the willing to infer it all, because you might see what injurious opposition, by papal usurpation, he endured; and then conjecture that his violent dealings against the church were not without intolerable provocation, which maddened rather than amended his troubled spirits. Easily you shall not find a prince more beneficial to the holy cause than he, if you take his former part of reign, before this ambitious Stephen of Langton's election exasperated desire of revenge. Most kind habitude then was betwixt him and the pope; and for alms toward *Jerusalem's* aid he gave the fortieth part of his revenue, and caused his baronage to second his example. Although therefore he be no ways excusable of many of those faults, both in government and religion, which are laid on

him, yet it much extenuates the ill of his action, that he was so besieged with continual and undigestible incentives of the clergy, with traitorous confidence striking at his crown, and in such sort, as humanity must have exceeded itself, to have endured it with any mixture of patience. Nor ever shall I impute that his wicked attempt of sending ambassadors, Thomas Hardington, Ralph Fitz-Nicholas, and Robert of London to *Amiramlu*, king of Morocco, for the *Mahometan* religion, so much to his own will and nature, as to the persecuting bulls, interdicts, excommunications, deposings, and such like, published and acted by them, which counterfeiting the vain name of pastors, sheering, and not feeding their sheep, made this poor king (for they brought him so poor, that he was called *Jobannes sine terra*) even as a phrenetic, commit what posterity receives now among the worst actions (and in themselves they are so) of princes.

S. His baronage were forc'd defensive arms to raise.

No sooner had Pandulph transacted with the king, and Stephen of Langton was quietly possessed of his archbishoprick, but he presently, in a council of both orders at *Paul's*, stir up the hearts of the barons against John, by producing the old charter of liberties granted by Hen. I. comprehending an insurrection of S. Edward's laws, as they were amended by the Conqueror, and provoking them to challenge observation thereof as an absolute duty to subjects of free state. He was easily heard, and his thoughts seconded with rebellious designs; and after denials of this purposed request, armies were mustered to extort these liberties. But at length by treaty in *Runnymede* near *Staines*, he gave them two charters; the one, of liberties general, the other of the forest: both which were not very different from our *grand charter*, and that of the forest. The pope, at his request, confirmed all: but the same year, discontent (through too much favour and respect given by the king to divers strangers, whom since the composition with the legate, he had too frequently, and in too high esteem, entertained) renewing among the barons, ambassadors were sent to advertise the pope what injury the see of Rome had by this late exaction of such liberties out of a kingdom, in which it had such great interest (for king John had been very prodigal to it, of his best and most majestic titles) and with what commotion the barons had rebelled against him, soon obtained a bull, curling in thunder all such as stood for any longer maintenance of those granted charters: This (as how can it be otherwise?) bred new, but almost incurable, broils in the state betwixt king and subject: But in whom more, than in the pope and his archbishop, was cause of this dissension? Both as wicked *boute-feus* applying themselves to both parts; sometimes animating the subject by censorious exauthorizing the prince, then assisting

^a Jo. Sev. in notit. London. pag. 51. v. Camd. in Scot. Buchan. alias. & alibi in eisdem archivis v.

^c Anre alios de his consulendus sit Marth. Paris.

^b Polydor. lib. 16.

^d North. 6. Rich. I. fin. rot. 12.

^e John Halland.

^f 16 Joh. reg. and

and moving forward his proneness, to faithless abrogation, by pretence of an interceding universal authority.

§. *The general charter seiz'd* ———

The last note somewhat instructs you in what you are to remember, that is, the *grand charters* granted and (as matter of fact was) repealed by king *John*; his son *Henry III.* of some ix years age (under protection first of *William Marshal* earl of *Pembroke*, after the earl's death, *Peter de Roches* bishop of *Winchester*) in the ninth year of his reign, in a parliament held at *Westminster*, desired of the baronage (by mouth of *Hubert de Burgh* proposing it) a fifteen: whereto, upon deliberation, they gave answer, *Quod regis petitionibus grante adquire, ceant si illis diu petitas libertates concedere voluisset; That they would willingly grant his request, if he would vouchsafe them those liberties so long desired.* The king agreed to the condition, and presently, under the great seal, delivered charters of them into every county of *England*, speaking as those of king *John*, faith *Paris*, *Ita quod chartarum utrorumque regum in nullo inveniuntur dissimiles; So that the charter of both kings are just alike.* Yet those, which we have published, want of that which is in king *John's*, wherein you have a special chapter that, if a *Jew's* debtor die, and leave his heir within age subject to payment, the usury during the nonage should cease, which explains the meaning of the statute of *Merton* chap. v. otherwise but ill interpreted in some of our year's books. After this, follows further, that no aid, except to redeem the king's person out of captivity, (example of that was in *Richard I.* whose ransom, out of the hands of *Leopold* duke of *Austria*, was near ccccxxx. pounds of silver, collected from the subject) make his eldest son knight, or marry his eldest daughter, should be levied of the subject, but by parliament. Yet, reason, why these are omitted in *Henry III.* his charter, it seems, easily may be given; seeing ten years before time of *Edward Longshanks's* exemplification (which is that whercon we now rely, and only have) all *Jews* were banished the kingdom: and among the petitions, and grievances of the commons, at time of his instauration of this charter to them, one was thus confented to; * *Nul-lum tallagium vel auxilium, per nos vel haeredes nostros de caetero in regno nostro imponatur seu levetur, sine voluntate & consensu communi archiepiscoporum, episcoporum, abbatum & aliorum praelatorum, comitum, baronum, militum, burgensium, & aliorum liberorum hominum:* Which although compared with that of aids by tenure, be no law, yet I conjecture that upon this article was that chapter of aids omitted. But I return to *Henry*: He, within some three years, summons a parliament to *Oxford*, and declare his full age, refusing any longer *Peter de Roches* his protection; but taking all upon his personal

government, by pretence of past nonage, caused all the charters of the forest to be cancelled, and repealed the rest, (for so I take it, although my author speak chiefly of that of the forest) and made the subject with price of great sums, rated by his chief justice *Hubert de Burgh*, renew their liberties, affirming that his grant of them was in his minority, and therefore so defeasible; which, with its like, (in disinheriting and seizing on his subjects possessions, without judicial course, beginning with those two great potentates *Richard* earl of *Cornwall*, his brother, and *William le Marshal* earl of *Pembroke*) bred most intestine trouble betwixt him and his barons, although some time discontinued, yet not extinguished even till his declining days of enthroned felicity. Observe among this, that where our historians and chronologers, talk of a desire by the baronage, to have the constitutions of *Oxford* restored, you must understand those charters cancelled at *Oxford*; where after many rebellious, but provoked, oppositions, the king at last, by oath of himself and his son *Edward*, in full parliament, † having nevertheless oft-times before made show of as much, granted again their desired freedom: which in his spacious reign, was not so much impeached by himself, as through ill counsel of alien caterpillars crawling about him, being as scougers then sent over into this kingdom. But *Robert of Gloucester* shall summarily tell you this, and give your palate variety.

The mirth too that here bel bi king Henries day
In this lond I cholle biginne to tell, put his may.
He adre 3 thes byethen, that is moore sonz were.
And the 4 king of Almaine the better, that to brie them here,
Ac fir William de Valence, and fir 5 Eimer thereto,
Cit of Winchester, and fir Guy de Lifewi also.
Thouz hom. and thouz the 1 quene, was cometh Frensch folc 1
That of English men me told as right nought.
And the king hom. let her wyl, that earl was as king.
And nome poore men god, and ne paide nothing.
So om of this byethen put ther prynces eny light.
Wyl fere, put we doth on wayng, wols all ou do right 2
Is too fere, we both king, be wille we moke do.
And many Englysh, alas 3 hylde me hom also.
So that thouz Godes grace the erle at last,
And the bisshops of the lond, and barons bespake baste,
That the kind Englyshmen of londz hii wolde out caste,
And that lond byng adoun, put her poer laste.
Therof 4 hii nome conseil, and to the king hii fnd,
So 5 adde pite of his lond and suiche manners amende.
So ther at last hii brought him thertro
To make a purveiance amendment to do.
And made it was at Oxenford, that lond boz to fere,
Twelf hundred as in yer of grace and fity and egypte.
Right aboute midnower fourtine night it laste.
The erles and the barons were well 3 stude baste,
Wol to amendi that lond, as the erle of Gloucece,
Sir Richard, and fir Simond erle of Leicester,
And fir John le Fitz. Gessy and other barons inowe.
So that at last the R. thertro hii upste.
So renue the Frensch turn, to 6 libet beyond se
Bi hor londz her and thier, and ne comt nought 7 ag.
And to grant 8 3 god lawes, and the old chartes also.
What so ofte was 9 granted er, and so ofte redde,
† They took. † Have. † Stedfast. ** Live.
† Againe. † Good.

* 25 Hen. VI. fol. 61, & 1 Elis. Plowd. 1. fol. 236. atqui v. Brad. lib. 3. cap. 26. §. 2.

† parliament, should after be enacted.

Thom. de Walsingham in 26 Ed. 1. Polyolb. lib. 17.

1. Luffigan, William of Valence, and Achelm, his half brothers, sons of Hubert, king John's decessor, daughter to Almar, earl of Engolmeine married to Hugh Boorne earl of March, in Poitiers.

2. Eleanor daughter to Raimund earl of Provence.

3. Richard earl of Cornwall, son to king John.

4. Athelmars.

5. No sallage or aid without consent

6. 43 Hen. III.

7. Guy of

8. 43 Hen. III.

9. Athelmars.

Hereof

Hereof was the charter made and sealed with three
Of the king and of other here men that there were :
Who none * kende tapers the bishops in hoz bond.
And the king himselfe and other here men of the lond.
The bishops † amanded all that there agon were
And ever els undode the lawes that foked were there,
With bringinge tapers ; and futh as lafte,
The king, and others sibr, amen, and the tapers about callen.

* Kindled tapers.

† Curled.

If particulars of the story, with precedents and consequents, be desired, above all I send you to *Matthew Paris*, and *William Rishanger* ; and end in adding, that these so controverted charters had not their settled surety until *Ed. I.* since whom they have been more than thirty times, in parliament confirmed.

S. The seat on which her kings inaugurated were.

Which is the chair and stone at *Westminster*, whercon our Sovereigns are inaugurated. The *Scottish* stories (on whose credit in the first part hereof, I importune you not to rely) affirm that the stone was first in *Gallicia* of *Spain* at *Brigantia*, (whether that be *Compostella*, as *Francis Tarapha* wills, or *Corunna*, as *Florian del Campo* conjectures, or *Betanfor*, according to *Mariana*, I cannot determine) where *Gathel*, king of *Scots*, there, sat on it as his throne : Thence was it brought into *Ireland* by *Simon Brech* first king of *Scots* transplanted into that isle, about DCC. years before Christ : Out of *Ireland* king *Fergus* (in him, by some, is the beginning of the now continuing *Scottish* reign) about CCC. LXX. years afterward, brought it into *Scotland* ; King *Kenneth* some DCCC. L. of the incarnation, placed it at the abbey of *Scone*, in the shieriffdom of *Perth*, where the coronation of his successors was usual, as of our monarchs now at *Westminster*, and in the *Saxon* times at *Kingston* upon *Thames*. This *Kenneth*, some say, first caused that distich to be engraven on it.

*Ni fallat fatum, Scoti, quocunque locatum
Invenient lapidem, regnare tenentur ibidem.*

(whereupon it is called *fatale marmor* ; the fatal marble, in *Hector Boetius*) and inclosed it in a wooden chair. It is now at *Westminster*, and on it are the coronations of our sovereigns ; thither first brought (as the author speaks) among infinite other spoils, by *Edward Longshanks*, after his wars and victories against king *John Baliol*.

S. Their women to inherit —

So they commonly affirm ; but that denial of sovereignty to their women cost the lives of many thousands of their men, both under this victorious *Edward*, and his son the *Black Prince*, and other of his successors. His case stood briefly thus ; *Philip IV.* furnished the fair, had issue three sons, *Lewis* the contentious, *Philip the long*, and *Charles the fair*.

All these successively reigned after him, and died without issue inheritable. He had likewise a daughter *Isabella* (I purposely omit the other, being out of the present matter,) married to *Edward II.* and so was mother to *Edw. III.* The issue male of *Philip the fair* thus failing, *Philip*, son and heir of *Charles* earl of *Valois*, *Beaumont*, *Alençon*, &c. which was brother to *Philip the fair*, challenged the crown of *France* as next heir male against this *Edward*, who answered to the objection of the *Salick* law, that, admitting it as their assertion was, yet he was heir male, although descended of a daughter ; and in a publick assembly of the estates, first about the protectorship of the womb, (for, queen *Joan* dowager of the fair *Charles*, was left with child, but afterward delivered of a daughter, *Blanch*, afterwards dutchess of *Orleans*) was this had in solemn disputation by lawyers on both sides, and applied at length also to the direct point of inheriting the crown. What followed upon judgment given against his right, the valiant and famous deeds of him and his *English*, recorded in *Walsingham*, *Froissart*, *Aemilius*, and the multitude of later collected stories make manifest. But for the law itself, every mouth speaks of it, few I think understand at all why they name it. The opinions are, that it being part of the ancient laws made among the *Salians*, the same with *Franks*, under king *Pharamond* about c13. cc. years since, hath thence denomination ; and, *Goropius* (that fetches all out of *Dutch*, and more tolerably perhaps this than many other of his etymologies) deriving the *Salians* name from *sal*, which in contraction he makes from *sadel*, as our word *saddle* ; (inventors whereof the *Franks*, faith he, were) interprets them, as it were, *horsemen*, a name fitly applied to the warlike and most noble of any nation, as *chivaliers* in *French*, and *equites* in *Latin* allows likewise. So that, upon collection, the *Salick* law by him, is as much as a chivalrous law, and *Salick* land, *quæ ad equestris ordinis dignitatem & in capite summo, & in cæteris membris conservandam pertinebat ; which belonged to the preservation of chivalrous state in the possessors* ; Which very well agrees with a sentence given in the parliament at *Bourdeaux* upon an ancient testament devising all the testators *Salick* lands, which was, in point of judgment, interpreted *seign, knights fees, or lands held*. And who knows not, that *seigns*, were originally, military gifts ? But then, if so, how comes *Salick* to extend to the crown, which is merely without tenure ? Therefore, *Ego scio* (saith a later *lawyer*) *legem Salicam agere de privato patrimonio tantum ; I know that the Salick law intends only private possessions*. It was composed (not this alone, but with others as they say) by *Wijogast*, *Badogast*, *Salogast*, and *Windogast*, wise counsellors about that *Pharamond's* reign. The text of it in this part is

* Hector Boeth. lib. 1. 10. & 14. Buchanan, rer. Scotie, 6. & 8.
* Bodin, de republ. 6. cap. 5. V. Barth. Chaffan. cons. Burgund. rubric. 3. §. 5. num. 70. ad ii. wrr.

* Huin.

* Francis, lib. 2.

† Paul. Merul. consog.

† Paul. Merul. consog.

offered us by *Claude de Seiffel*, bishop of *Marfeilles*, *Bodin*, and divers others of the *French*, as it were, as ancient as the origin of the name, and in these words, *De terra salica nulla portio hæreditatis mulieri veniat, sed ad virilem sexum tota terræ hereditas perveniat*; No part of the Salick land can descend to the daughter, but all to the male; and in substance, as referred to the person of the king's heir female. So much is remembered by that great civilian *Baldus*, and divers others, but rather as custom than any particular law, as one of that kingdom also hath expressly and newly written; *Ce n'est point une loy écrite, mais nee avec nous, que nous n'avons point inventée, mais l'avons puisée de la nature même, qui le nous a ainsi appris & donne cet instinct*; This is no law written, but learned of nature. But why, the same author dares affirm, that king *Edward* yielded upon this point to the *French Philip de Valois*, I wonder, seeing all story and carriage of state in those times is so manifestly opposite. *Becaunus* undertakes a conjecture of the first cause which excluded *Gynæocracy* among them, guessing it to be upon their observation of the misfortune in war, which their neighbours the *Brutterans* (a people about the now *Over-Iffel* in the *Netherlands*, from near whom he, as many other, first derive the *Franks*) endured in time of *Vespasian*, under conduct and empire of one *Velleda*, a lady even of divine esteem amongst them. But howsoever the law be in truth, or interpretable, for it might ill become me to offer determination in matter of this kind, it is certain, that to this day, they have an use of ancient time, which commits to the care of some of the greatest peers, that they, when the queen is in child-birth, be present, and warily observe, lest the ladies privily should counterfeit the inheritable sex, by supposing some other male when the true birth is female, or, by any such means, wrong their ancient custom royal, as of the birth of this present *Lewis* in the XIIIth, on the last of *September*, in 1133. DC. I. is, after other such remembered.

§. Of these two factions styled, of York and Lancaster.

Briefly their beginning was thus^a. *Edw. III.* had seven sons, *Edward* the black prince, *William of Hatfield*, *Lionel* duke of *Clarence*, *John* of *Gaunt* duke of *Lancaster*, *Edmund* of *Langley* duke of *Tork*, *Thomas* of *Woodstock*, and *William* of *Windfor*, in prerogative of birth as I name them. The *Black Prince* died in life of his father, leaving *Richard* of *Bourdeaux*, afterward *II. William* of *Hatfield* died without issue; *Henry* duke of *Lancaster* (son to *John* of *Gaunt* the fourth brother) deposed *Richard II.* and to the *V. and VI.* of his name left the kingdom, defending in right line of the family of *Lancaster*. On the other side, *Lionel* duke of *Clarence*, the third brother, had only issue *Philip* a daughter, married to *Edmund*

Mortimer earl of *March*, who upon this title, was designed heir apparent to *Rich. II. Edmund*, by her, had *Roger*; to *Roger* was issue two sons, and two daughters; but all died without posterity, excepting *Anne*. Through her married to *Richard* earl of *Cambridge*, son to *Edmund* of *Langley*, was conveyed (to their issue *Richard* duke of *Tork*, father to king *Edward IV.*) that right which *Lionel*, whose heir she was, had before the rest of that royal stem. So that *Lancaster* derived itself from the fourth brother; *Tork*, from the blood of the third and fifth united. And in time of the sixth *Henry* was this fatal and enduring misery over *England*, about determination of these titles, first conceived in xxx of his reign, by *Richard* duke of *Tork*, whose son, *Edw. IV.* deposed *Henry* some nine years after; and having reigned near like space, was also, by re-adoption of *Henry*, deprived for a time, but restored and died of it possessed, in whose family it continued until after the death of *Rich. III. Henry* earl of *Richmond*, and heir of *Lancaster*, marrying *Elizabeth* the heir of *Tork*, made that happy union. Some have referred the utmost root of the *Lancastrian* title to *Edmund*, indeed eldest son to *Hen. III.* but that by reason of his unfit deformity, his younger brother *Edward* had the succession, which is absurd and false. For, one whom I believe before most of our monks, and the king's chronologer of those times, *Matthew Paris*, tells expressly the days and years of both their births, and makes *Edward* above three years elder than *Crook-back*. All these had that most honoured surname *Plantagenet*; which hath been extinct among us ever since *Margaret* countess of *Salisbury*, daughter to *George Plantagenet*, duke of *Clarence*, was beheaded in the *Tower*. By reason of *John* of *Gaunt*'s device, being a red rose, and *Edmund* of *Langley*'s, a white rose, these two factions afterward, as for cognizances of their descent and inclinations, were by the same flowers distinguished.

§. Yet jealous of his right, descended to his grave.

So jealous, that towards them of the *Lancastrian* faction, nought but death (as there reason of state was enough) was his kindness. Towards strangers, whose slipping words were in wrestled sense, seeming interpretable to his hurt, how he carried himself, the relations of *Sir John Markham*, his chief justice, *Thomas Burdet*, an esquire of *Warwickshire*, and some citizens, for idle speeches, are testimony. How to his own blood, in that miserable end of his brother *George*, duke of *Clarence*, is shewed: Whose death hath divers reported causes, as our late chroniclers tell you. One is supposed upon a prophecy for speaking that *Edward*'s successors name should begin with *G*; which made him suspect this *George* (a kind of superstition not exemplad, as I now remember, among our

^a Ad. I. ff. de senatorib.

^b Hierome Bignon, de le excel. des Roies. livre. 3.

^c V. Tacit. hist. 4.

^d Rodolph.

Borer. comment. 8.

^e Ex arcliv. parl. 1 Ed. IV. in lucem edit. 9. Ed. IV. fol. 9.

^f Ap. Polydor. lib. 16.

^g Hen. V. 111. J. Stow, pag. 717.

princes; but in proportion very frequent in the oriental empire, as passages of the names in *Alexius, Manuel*, and others, discover in *Nicephorus Choniates*) and many more serious, yet insufficient faults, tasting of *Richard* duke of *Glocester's* practices, are laid to his charge. Let *Polydore, Hall*, and the rest disclose them. But of his death, I cannot omit, what I have newly seen. You know, it is commonly affirmed, that he was drowned in a hoghead of *Malnsey* at the *Tower*. Once,^a that very lately would needs dissuade men from drinking healths to their princes, friends, and mistresses, as the fashion is, a bachelor of divinity, and professor of history and Greek at *Coloz*, in his division of drunken natures, makes one part of them, *Qui in balaneas mutari cuperent, dummodo mare in generosissimum vinum transformaretur; Which would with themselves whales, so the sea were strong liquor*; And for want of another example, dares deliver that, *such a one was George^b earl of Clarence, who, when, for suspicion of treason, he was judged to die, by his brother Ed. IV. and had election of his form of death given him, made choice to be drowned in Malnsey*. First, why he calls him earl of *Clarence*, I believe not all his professed history can justify; neither indeed was ever among us any such honour. Earls of *Clare* long since were; but the title of *Clarence* began when that earldom was converted into a dukedom by creation of *Lionel*, who married with the heir of the *Clares*, duke of *Clarence*, third son to *Ed. III.* since whom never have been other than dukes of that dignity. But, unto what I should impute this unexcusable injury to the dead prince, unless to *Icarus's* shadow, dazzling the writers eyes, or *Bacchus's* revengeful causing him to slip in matter of his own profession, I know not. Our stories make the death, little better than a tyrannous murder, privily committed without any such election. If he have other authority for it, I would his margin had been so kind as to have imparted it.

§. Upon a daughter born to John of Somerset.

John of *Gannet* duke of *Lancaster*, had issue by *Catherine Swinsford*, *John* of *Beaufort* earl of *Somerset*, and marquiss of *Dorset*. To him succeeded his second son, *John*, *Henry* the eldest dead, and was created first duke of *Somerset* by *Henry V.* Of this *John's* loins was *Margaret*, mother to *Henry VII.* His father was *Edmund of Huddam*, made earl of *Richmond* by *Hen. VI.* son to *Owen Tudor*, deriving himself from the *British Cadwallader*, by his wife queen *Catherine* dowager to *Hen. V.* and hence came that royally enobled name of *Tudor*, which in the late queen of happy memory ended.

§. Defender of the faith—

When amongst those turbulent commotions of *Lutherans* and *Romanists* under *Charles V.*

such oppositions increased, that the pope's three crowns even tottered at such arguments as were published against his pardons, mass, monastic profession, and the rest of such doctrine; this king *Henry*, that *Luther* might want no sorts of antagonists, wrote particularly against him in defence of pardons, the papacy, and of their seven sacraments; of which is yet remaining the original in the^d *Vatican at Rome*, and with the king's own hand thus inscribed,

Anglorum rex, Henricus, Leoni X. mittit hoc opus, & fidei testem & amicitiae.

Henry king of England, sends this to pope Leo X. as a testimony of his faith, and love to him.

Hereupon, this *Leo* sent him the title of *defender of the faith*; which was, as ominous to what ensued. For towards the twenty fifth year of his reign, he began to examine their traditions, doctrine, lives, and the numerous faults of the corrupted time, that he was indeed founder of reformation for inducement of the true ancient faith; which by his son *Edward VI.* queen *Elizabeth*, and our present sovereign, hath been to this day piously established and defended.

To ease your conceit of these kings here sung, I add this chronology of them.

A. CHR.

- CIJ.LXVI.----- *William I.* conquered England.
 CIJ.LXXXVII. --- *William the Red (Rufus)* second son to the conqueror.
 CIJ.C.----- *Henry I.* surnamed *Beauclerc*, third son to the first *William*.
 CIJ.CXXXV.----- *Stephen* earl of *Moreton* and *Bologne*, son to *Stephen*, earl of *Blois*, by *Adela*, daughter to the Conqueror. In both the prints of *Matthew Paris*, Ann. CIJ.LXXXVI. you must mend *Beccensis comitis*, and read *Blesensis comitis*; and howsoever it comes to pass, he is, in the same author, made son to *Ted-bald* earl of *Blois*, which indeed was his brother.
 CIJ.C.LIV.----- *Hen. II.* son to *Geoffrey Plantagenet*, earl of *Anjou*, and *Maud* the empress, daughter to *Henry Beauclerc*.
 CIJ.C.LXXXIX.--- *Richard I. Coeur de lion*, son to *Henry II.*
 CIJ.C.XCIX.----- *John*, brother to *Coeur de lion*.
 CIJ.CC.XVI.----- *Henry III.* son to king *John*.

^a Francisc. Martens, de rim bibend. 1. cap. 1. edit. superioribus nundinis.

^b Cens. Claresian. Cacterum acro Normannico

^c From Clare in Suffolk. Vid. Polydore.

^d Defensor ecclesiae. I. Sleidan comment. 1.

^e Edzard

- Cl₂CC.LXXIII. Edward I. *Longshanks*, son to *Hen. III.*
- Cl₂CCC.VIII. Edward II. of *Caernarvan*, son to *Ed. I.* deposed by his wife and son.
- Cl₂CCC.XXVI. Edward III. son to *Ed. II.*
- Cl₂CCCLXXXVII. *Richard II.* of *Bourdeaux*, son to *Edw. the Black Prince*, son to *Edw. III.* deposed by *Henry* duke of *Lancaster*.
- Cl₂CCC.XCIX. *Henry IV.* of *Bolingbroke*, son to *John of Gaunt*, duke of *Lancaster*, fourth son to *Edward III.*
- Cl₂CD.XIII. *Henry V.* of *Monmouth*, son to *Hen. IV.*
- Cl₂CD.XXII. *Henry VI.* of *Windfor*, son to *Hen. V.* deposed by *Edward*, earl of *March*, son and heir to *Richard* duke of *Tork*, deriving title from *Li-onel*, duke of *Clarence* and *Edmund* of *Langley* third and fifth sons of *Edward III.*
- Cl₂CD.LX. *Edward IV.* of *Roan*, son and heir of *Tork*. In the tenth of his reign, *Hen. VI.* got again the crown, but soon lost both it and life.
- Cl₂CD.XXCIII. *Edward V.* son to the *IV.* of that name, murdered with his brother *Richard* duke of *Tork*, by his uncle *Richard* duke of *Glocester*.
- Cl₂CD.XXCIII. *Richard III.* brother to *Edward IV.* slain at *Bosworth* field, by *Henry* earl of *Richmond*. In him ended the name of *Plantagenet* in our kings.
- Cl₂CD.XXCV. *Henry VII.* heir to the *Lancastrian* family, married with *Elizabeth*, heiress to the house of *Tork*. In him the name of *Tudor* began in the crown.
- Cl₂D.IX. *Henry VIII.* of *Greenwich*, son to *Hen. VII.*
- Cl₂D.XLVI. *Edward VI.* of *Hampton* court, son to *Hen. VIII.*
- Cl₂D.LIII. *Mary*, sister to *Edw. VI.*
- Cl₂D.LVIII. *Elizabeth*, daughter to *Hen. VIII.*

§. Great Andredswalde sometime —

All that maritime tract comprehending *Suffex*, and part of *Kent* (so much as was not mountains, now called the *Downs*, which in *British*, old *Gaulish*, *Low Dutch*, and our *English*, signifies but *hills*) being all woody, was called *Andredswalde*,^a i. e. *Andredswood*, often mentioned in our stories, and *Newenden* in *Kent* by it *Andredcester* (as most learned *Camden* upon good reason guesses) whence perhaps the wood had his name. To this day we call those woody lands, by north the *Downs*, the *W'cald*; and the channel of the river that comes out of those parts, and discontinue the downs about *Bramber*, is yet known in *Shoreham* ferry, by the name of *W'cald-ditch*; and, in another *Saxon* word equivalent to it, are many of the parishes terminations on this side the downs, that is, *berst*, or *hurst*, i. e. a *wood*. It is called by *Ethelwerd*^b expressly *immanis sylva, quae vulgo, Andredswalda nuncupatur*, and was ^c cxx miles long, and xxx broad. The authors conceit of these forests being nymphs of this great *Andredswalda*, and their complaint for loss of woods, in *Suffex*, so decayed, is plain enough to every reader.

§. As Arun which doth name the beauteous Arundel.

So it is conjectured, and is without controversy justifiable, if that be the name of the river. Some fable it from *Arundel*, the name of *Bevis*'s horse. It were so as tolerable as ^b *Bucephalus*, from *Alexander*'s horse, ¹ *Tymenna* in *Lycia*, from a goat of that name, and such like, if time would endure it. But *Bevis* was about the conquest, and this town, is by name of *Erundele*, known in time of king *Alfred*^m, who gave it with others to his nephew *Athelm*. Of all men, ⁿ *Goropius* had somewhat a violent conjecture, when he derived *Harondell*, from a people called *Charudes*, in *Ptolemy*, towards the utmost of the now *Jutland*, part of whom he imagines, about the *Saxon* and *Danish* irruptions, planted themselves here, and by difference of dialect, left this as a branch spring of their country title.

§. And Adur coming on to Shoreham.

This river that here falls into the ocean might well be understood in that^a port of *Adur*, about this coast, the relics whereof, learned *Camden* takes to be *Edrington*, or *Adrington*, a little from *Shoreham*. And the author here so calls it *Adur*.

§. Doth blush, as put in mind of those there sadly slain.

In the plain near *Hastings*, where the *Norman William* after his victory found king *Ha-*

^a *Dunum* ut ex Clitophonte apud Plut. habet *Camd.* & *Dayn* Belgis dicuntur tumuli arenarii oceano objecti. *Gorop.* Gallie. 1. allii. *We yet call a desert, a wilderness from this root.*

^b *Lib. 4. cap. 3.* ^c *Plutarch* in *Alex.* & *Q. Cur. lib. 9.* ^d *Sieph.* *cap. 103.* ^e *Henric.* *Huntingdon.* ^f *Testament.* *Alfred.* ^g *ubi etiam.* ^h *Ritherafeld.* ⁱ *Dicallingum.* ^j *Augmeringum.* ^k *Felham.* & aliae in hoc agro villae leguntur *Osterthor* ejusdem cognatio.

^l *Goth. Danic. lib. 7.*

^m *Pertus Adurum* in notis. provinc.

rold slain, he built *Battel* abbey, which at last (as divers other monasteries) grew to a town enough populous. Thereabout is a place which after rain always looks red, which some I have (by that authority, the muse also) attributed to a very bloody sweat of the earth, as crying to heaven for revenge of so great a slaughter.

Illustrations on the eighteenth song.

Out of *Sussex*, into its eastern neighbour, *Kent*, this canto leads you. It begins with *Rother*, whole running through the woods infusing *Oxwey*, and such like, poetically here described is plain enough to any apprehending conceit. And upon *Medway*'s long of our martial and heroic spirits, because a large volume might be written to explain their glory in particular action, and in less comprehension without wrong to many worthies, it is not performable. I have omitted all illustration of that kind, and left you to the muse herself.

§. That Limen then was named—

So the author conjectures; that *Rother*'s mouth was the place called *Limen*, at which the *Danes*, in time of king *Alfred*, made irruption; which he must, I think, maintain by adding likelihood that *Rother* then fell into the ocean about *Hithre*; where (as the relics of the name in *Lime*, and the distance from *Canterbury* in *Antoninus*, making ' *portus Lemanis*, which is misprinted in *Surtis*'s edition, *portem Lemanis*, xvi miles off) it seems *Limen* was; and if *Rother* were *Limen*, then also, there was it discharged out of the land. But for the author's words, read this; *Equestris paganorum exercitus cum suis equis ccl. navibus Cantiam transfretus in ostio amnis Limen qui de sylva magna Andred nominata decurrit, applicuit, a cujus ostio iv miliaris in eandem sylvam naves suas sursum traxit, ubi quandam arcem semistructam, quam pauci inhabitabant villani, diruerunt, aliamque sibi firmiorem in loco qui dicitur Apultra construxerunt.* The *Danes* with 250 sail, came into the mouth of the river *Limen*, which runs out of *Andredswald*; from whence iv miles into the wood they got in their ships, and built them a fort at *Appledore*; which are the syllables of *Florence* of *Worcester*; and with him in substance fully agrees *Matthew of Westminster*; nor can I think but that they imagined *Rye* (where now *Rother* hath its mouth) to be this port of *Limen*, as the muse here; if you respect her direct terms. *Henry* of *Huntingdon* names no river at all, but lands them, *ad portum Limene cum 250 navibus qui portus est in orientali parte Cent juxta magnum nemus Andredslage*; At port *Limen* by *Andredswald* in the east of *Kent*. How *Rother*'s mouth can be properly said in the east (but ra-

ther in the south part) of *Kent*, I conceive not, and am of the adverse part, thinking clearly that *Hithre* must be *portus Lemanis*, which is that coast, as also learned *Camden* teaches, whose authority cited out of *Huntingdon*, being near the same time with *Florence*, might be perhaps thought but as of equal credit; therefore I call another witness (that I lived not much past 1. years after the arrival) in these words. In *Limneo portu constituunt puppes, Apoldre* (so I read, for the print is corrupted) *loco condito orientali Cantiae parte, destruntque ibi prisco opere castrum propter quod rustica manus exigua quippe intrinsecus erat, illicque hiberna castra confirmant*; They leave their ships in port *Limen*, making their rendezvous at *Appledore* in the east of *Kent* (for this may better endure that name) and there destroyed one castle and built another. Out of which you note both, that no river, but a port only, is spoken of; and that the ships were left in the shore at the haven, and thence the *Danes* conveyed their companies to *Appledore*. The words of this *Ethelwold* I respect much more than these later stories, and I would advise my reader to incline so with me.

§. What time I think in hell that instrument devis'd.

He means a gun; wherewith that most noble and right martial *Thomas Mountague*, earl of *Salisbury*, at the siege of *Orleans* in time of *Hen. VI.* was slain. The first inventor of them (I guess you dislike not the addition) was one *Berthold Swartz*, (others say *Constantine Anklitzen*, a *Dutch* monk and chymist) who having in a mortar sulphurous powder for medicine, covered with a stone, a spark of fire by chance falling into it, fired it, and the flame removed the stone; which he observing, made use afterward of the like in little pipes of iron, and shewed the use to the *Venetians* in their war with the *Genoese* at *Chioggia*, about 1300. This is the common assertion; but I see as good authority, that it was used above xx years before in the *Danish* seas. I will not dispute the convenience of it in the world, compare it with *Salmoneus*'s imitation of thunder, *Archimedes*'s engines, and such like; nor tell you that the *Chinese* had it, and printing, so many ages before us, as *Mendoza*, *Maffy*, and others deliver; but not with persuading credit to all their readers.

§. Whereas some say before he used on foot to pass.

The allusion is to *Britain*'s being heretofore joined to *Gaul* in this straight, betwixt *Dover* and *Calais*, some xxx miles over, as some moderns have conjectured. That learned antiquary *J. Twine*, is very confident in it, and derives the name from *With*, signifying (as he says) as

⁹ Guil. Parvus hist. 1. cap. 1.
de invent. rer. 2. cap. 2. & Salmuth. ad G. Panciroli, 2. tit. 12.

¹⁰ Lemanis in noiv. ur. provinc.
Achilles Gschlar. ap. Mun. colomg. 7.

¹¹ Ethelwold. lib. 4. cap. 4.
? V. Polyd.

much as *guith*, i. e. a separation in *Welsh*, whence the *Welsh* of *Wight* was so called; *Guith* and *Wight* being soon made of each other. Of this opinion is the late *Versegan*, as you may read in him; and for examination of it, our great light of antiquity *Camden* hath proposed divers considerations, in which, experience of particulars must direct. Howsoever this was in truth, it is as likely, for ought I see, as that *Cyprus* was once joined to *Syria*, *Euboea*, now *Negreponte*, to *Boeotia*, *Atalante* to *Euboea*, *Belbicum* to *Bithynia*, *Leucosia* to *Thrace*, as is affirmed; and *Sicily* (whose like our island is) was certainly broken off from the continent of *Italy*, as both *Virgil* expressly, *Strabo* and *Pliny* deliver; and also the names of *Rbegium*, ² *παρὰ τὸ πρυωβαν* from breaking off, and of the self *Sicily*; which, rather than from *secare*, to cut off, I derive from *scilire*, which is of the same signification, and nearer in analogy. *Claudian* calls the isle

— *diducta Britannia mundo*.

Britain pull'd from the world.

and *Virgil* hath

— *toto divisos orbe Britannos*;

Britons divided from the whole world.

Where *Servius* is of opinion, that, for this purpose, the learned poet used that phrase. And it deserves inquiry, how beasts of rapine, as foxes and such like came first into this island (for *England* and *Wales*, as now *Scotland* and *Ireland*, had store of wolves, until some ccc years since) if it were not joined to a firm land, that either by like conjunction, or narrow passage of swimming might receive them from that continent where the ark rested, which is *Armenia*. That, men desired to transport them, is not likely; and a learned ^b *Jesuit* hath conjectured, that the *West Indies* are therefore, or have been, joined with firm land, because they have lions, wolves, panthers, and such like, which in the *Bermudas*, *Cuba*, *Hispaniola*, *S. Domingo*, and other remote isles, are not found. But no place here to dispute the question.

§. Not suffering foreign laws should thy free customs bind.

To explain it, I thus *English* you a fragment of an old monk: *When the Norman Conqueror had the day, he came to Dover castle, that he might with the same subdue Kent also; wherefore, Stigand archbishop, and Egelsin abbot, as the chief of that shire, observing that now whereas heretofore no villeins (the Latin is nullus fuerat servus, and applying it to our law phrase, I translate it) had been in England, they should be now all in bondage to the Nor-*

*mans, they assembled all the county, and shewed the imminent danger, the insolence of the Normans, and the hard condition of villenage. They, resolving all rather to die than lose their freedom, purpose to encounter with the duke for their country's liberties. Their captains are the archbishop and the abbot. Upon an appointed day, they meet all at Swancomb, and harbouring themselves in the woods, with boughs in every mans hand, they compass his way. The next day, the duke coming by Swancomb, seemed to see with amazement as it were a wood approaching towards him. The Kentish men at the sound of a trumpet, take themselves to arms, when presently the archbishop and abbot were sent to the duke and saluted him with these words: Behold, Sir duke, the Kentish men come to meet you, willing to receive you as their liege lord, upon that condition, that they may for ever enjoy their ancient liberties and laws used among their ancestors; otherwise, presently offering war; being ready rather to die, then undergo a yoke of bondage, and lose their ancient laws. The Norman in this narrow pinch, not so willingly, as wisely, granted the desire; and hostages given on both sides, the Kentish men direct the Normans to Rochester, and deliver them the county and the castle of Dover. Hither is commonly referred the retaining of ancient liberties in Kent. Indeed it is certain that special customs they have in their gavelkind (although now many of their gentlemen's possessions are altered in that part) suffering for felony, without forfeiture of estate, and such like, as in particular, with many other diligent traditions you have in *Lambard's* perambulation. Yet the report of *Thomas Spor*, is not, methinks, of clear credit, as well by reason that no warrant of the historians about the conquest affirms it (and this monk lived under *Ed. 1.*) as also for his commixture of a falsity about villenage, saying it was not in *England* before that time, which is apparently false by divers testimonies. *Guiseo*, (says king *Ina's* laws) *ryce on Sunnan-tæg, be his hlaford ef hærtig he freo*; If a villein work on Sunday by his lord's command, he shall be free; and under *Edward* the Confessor, *Thorold* of *Beuchenele* grants to the abbey of *Crowland*, his manor of *Spalding*, with all the appurtenances; *Scilicet Colgrinum praepositum meum, & totam sequelam suam, cum omnibus bonis & catallis, quae habet in dicta villa, &c.* Item *Hardingum fabrum & totam sequelam suam*; and the young wench of *Andewor*, that *Edgar* was in love with, was a *niece*. But for *Kent*, perhaps it might be true, that no villeins were in it, seeing since that time it hath been adjudged in our law, that one born there, could not, without cognizance of record, be a villein.*

^a Sam. Beulan, ad Nemium.

^b Plin. hist. nat. 3. cap. 88.

^c Trog. hist. 4. & Strab. 4.

^d Var. de re rust. 1.

cap. 49.

^e Joseph. Acoll. de natur. novi orbis 1. cap. 30. & 31.

^f Th. Spotus ap. Lamb. in explic. verb.

^g Stat. 11. Hen. VIII. cap. 3.

^h Colgrin, my kinsfolk, and his offer, with all goods and chattels, &c.

ⁱ Itin. Cornub. 30 Ed. 1.

^k Villenage 46, & Mich. 5. Ed. II. mfc. in bibliothec. int. Temph. cal. John de Garon.

§. And foremost ever plac'd when they shall reckon'd be.

For this honour of the *Kentish*, hear one * that wrote it about *Hen. II. Enudus* (as some copies are, but others, *Cinidus*; and perhaps it should so be, or rather *Cnaut*, for king *Cnut*; or else I cannot conjecture what) *quanta virtute Anglorum; Dacos Danosque fregerit motus: que compefuerit Noricorum, vel ex eo perspicuum est, quod ob egregiae virtutis meritum quam ibidem potenter & patenter exercuit, Cantia nostra, primae cohortis honorem & primus congressus hostium usque in hodiernum diem in omnibus praeliis obtinet. Provincia quoque Severiana, quae moderno usu & nomine ab incolis Wiltesira vocatur, eodem jure sibi vendicat cohortem subsidiariam, adjecta sibi Devonia & Cornubia. What performance king Cnut did among the Danes and Norwegians, by English*

valour, is apparent in that until this day, the Kentish men for their singular virtue then shewn, have prerogative always to be in the van-guard; as Wiltshire, Devonshire, and Cornwall in the rear. Briefly, it had the first English king, in it was the first christianity among the English, and Canterbury then honoured with the metropolitick see: all which give note of honourable prerogative.

§. Grim Godwin but the while seems grievously to lour.

That is *Godwin-sandr*, which is reported to have been the patrimony ⁿ of that *Godwin*, earl of *Kent*, under *Edward the Confessor*, swallowed into the ocean by strange tempest, somewhat after the conquest, and is now as a floating isle or quicksand, very dangerous to sailors, sometimes as fixed, sometimes moving, as the muse describes.

* Joan. Sarisbur. de nugis curial. 6. cap. 18.

ⁿ Heft. Boeth. hist. Scotic. 12. & Jo. Twinn. Albionie. 12.



N O T E S

O N

Sir JOHN FORTESCUE,

De laudibus legum Angliae.

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II M

T O

T O T H E R E A D E R.

THIS author, Sir John Fortescue, was chief justice to Hen. VI. as the records of the later half of his reign, every where shew; and that he might statum suum decentius manutenere, in part. 1. rot. pat. 20. Hen. VI. membran. 10. an annuity of clxxx marks is given him out of the hamper, with cxvi s. xi d. q. Percipiendum singulis annis ad festum natalis domini pro una roba & furrura pro eadem, erga idem festum. And lxvi s. vi d. singulis annis ad festum pentecostes pro una roba & linura pro eadem, erga idem festum. He is called his chancellor also. In this book, his title, given by himself, is cancellarius Angliae. And in his declaration, or rather retractation, of that he had written against the title of the house of York, himself puts in the mouth of a friend of his expostulating with him, these words, considering that ye were the chief chancellor to the said late king. It seems, being with Henry VI. driven into Scotland, he was made his chancellor, the memory whereof (as it could hardly be otherwise) wants in the patent rolls. His books, which I have seen, are three: This now newly published, his difference between dominium regale, and dominium politicum and regale; and that declaration touching the title of the crown. Neither of the two last were ever published; but they remain mss. in divers hands. As touching his descent; by good testimony, he is made son to Henry Fortescue, son of Sir John Fortescue, knight (captain of Meaux, and governor of Brie in France under Hen. V.) who was second son of William Fortescue, of Wimelston in Devonshire, esquire.

Because he was Englished by him that first published him, this, part of the title, and the notes on him are in English. What he hath of the commendations of the law of England, must not be expected to be so copious, as if all, that might thereof have been said, had been hunted for by him to be here congested. He shews that he instructed the young prince, and only in some such few occurrences of our trials and positions, as might be, without difficulty, apprehended by a mind so tender and strait to the courts of judicial contention. Neither gives he enough to satisfy or the malice, or the ignorance of some foul mouthed declaimers against it, who, for the most part (if they descend to particulars, and make a case to find fault withal) either ridiculously compact things incompatible, just like the sycophant in that geography of his in Trin umnus.

Omnium primum in Pontum advecti ad Arabiam terram sumus,

and thence,

Ad caput amnis quod de coelo exoritur sub folio Jovis,

or else, measuring an established and universal proceeding or position only by their own damage, never coming near apprehension of the true reason, rail at it, with like judgment, as the parasite, in a lost comedy of Plautus, doth at the certain course of sun-dials, being thence only moved, because the shadow went not so fast as his stomach, which, when he was a child, was the only dial, and that

-----iste monebat esse, nisi quum nihil erat.

Nunc etiam quod est non est, nisi SOL I lubet.

But no place is here for more of this, and nos hac a scabie tenemus ungues.

To this edition, are added the sums of Sir Ralph de Hengham, chief justice to Edw I. never till now printed; in whom, although most of the learning be touching essoins, defaults, and course of proceedings in such actions which are in seldom use at this day, yet divers things occur both specially observable in what what he hath touching those proceedings (which a professor of the

1411

THE NOTES.

AD C A P. III.

1. **A**UCTORE *canfarum*.] Questionless he meant the author of the little book of *causis*, put in some Latin editions at the end of *Aristotle's* works, with some other ridiculously attributed to *Aristotle*. There are, who think it to be done by *Alpharabius*, others by *Avempace*, others by *Proclus*. It was turned out of *Hebrew* into *Latin*, but is not extant in *Aristotle's* language. It is antient, but clearly beneath the age of *Aristotle*. In *proposit*. 1. the substance is of what he cites.

AD C A P. VIII.

2. **A**pprenticiis.] From *apprendre*, i. e. to learn, comes *apprentice de la ley*; which will denote as much as *discipulus*, applied by *Justinian* to somewhat a like degree in his law. For after he had reckoned his *dispondii*, or *Justiniani novi*, that is, students of two years standing, his *Papinianisti*, students of three years, his *Lytæ*, those of four years, and his *Prolytæ*, for them of five, to whom the reading of the whole course of that law, and an able understanding was imputed, he then, comprehending the *Prolytæ*, and the rest labouring to that degree, adds, *Discipuli igitur, omnibus eis legitimis arcaus reservatis, nihil habeant absconditum*, but that they might afterwards be *justitiæ satellites*, & *judiciorum optimi tam athletæ, quam gubernatores omni loco æquoque fociles*. So he writes, *digest. proem*. The antientest mention of an apprentice in this sense which our published books have, is in 1 *Ed. III.* fol. 16. pl. 3. But in the monuments of parliament, of 20 *Ed. I.* extant in the *Tower*, this testimony is of them; *De attornatis & apprenticiis, d. rex innoxuit Johanni de Mettingham & sociis suis, quod ipsi per eorum discretionem providere & ordinare certum numerum de quolibet comitatu, de melioribus & legalioribus & libentius addiscentibus, secundum quod intellexerint, quod curiæ suæ & populo de regno melius valere poterit, & majus commodum fuerit, & quod ipsi quos ad hoc elegerint curiam sequantur, & alii non. Et videtur regi & ejus consilio quod septies-viginti sufficere poterint, &c.* Apponunt tamen præfati justitiiarii plures si viderint esse faciendum, vel numerum anticipent, & de aliis remanentibus fiat secundum discretionem justitiiariorum. Mention is of them also in *Fleta*, lib. 2. cap. 37. Part of that of 20 *Ed. I.* is transcribed in the epistle of the 11th report, where more is out of antiquity, touching these apprentices. The name was used for practisers, and *apprentici ad barros*, are barristers in the ridiculous verses of *Andrew Horn*, before his *mirrour aux justices*. These are they,

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*Hanc legum summam, si quis vult mira tueri,
Perlegat, & sapiens si vult orator haberi;
Hoc apprenticiis ad barros ebre munus,
Gratum iudicis utile mittit opus.
Horn mihi cognomen, Andreas est mihi nomen.*

This *Horn* lived about *Edw. II.* his certain age I yet know not. The verses I transcribed out of an antient copy of him, extant in *Bennet college library in Cambridge*, and written, as it seems, by the hand about *Edw. III.* or *Rich. II's* time.

3. *Proprio ore nullus regum Angliæ.*] Yet certainly the kings themselves often sat in court, in the king's bench; And in the rolls of charters under king *John*, and the time near him, often occur grants, that such or such *English* should not be impleaded, or put to answer, *nisi coram nobis vel capitali justitia nostra*, and to *Normans*, *nisi coram nobis vel capitali jensefallo nostro*. For example, in *rot. chart. 1. reg. Joh. chart. 171. memb. 28.* the king gives to one *Jacob*, a *Jew of London*, and a priest of the *Jews*, *presbyteratum omnium Judæorum totius Angliæ* for life, and the patent hath in it, *prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut coram capitali justitia nostra, sicut charta regis Richardi fratris mei testatur*. Here *coram capitali justitia*, is divided from *coram rege*; the last signifying before the king's person; although now pleas held in the king's bench, before the successor of the *capitalis justitia*, are entered *coram rege*. And some rolls, as of 44 *Hen. III.* have *placita coram domino rege de tempore Hugonis Bigod justitiiarii Angliæ*, and also in the same bundle, *placita coram Hugone le Bigod justitiiario Angliæ*. And *Bracton*, lib. 3. tract. de actionibus, cap. 5. *Si actiones criminales sunt, in curia domini regis debent terminari, & hoc coram ipso rege si tangant personam suam*. And in 2 *Ed. IV.* the king sat in person.

AD C A P. XIII.

4. **S**cotiam, quæ ei quondam ut ducatus.] Of that matter see *Guil. Malmesburiens. de gest. reg. lib. 2. cap. 6. Roger de Hoveden, fol. 311. b. & 577. a & b. & 461. Matth. Paris sub anno 1072. & 1175. & 244. pag. 208. 872. & 1124. sub anno 1252. Matth. Westmonasteriens. sub anno 1054. and what he hath with *Thomas of Walsingham, sub anno 1290. & seqq.* and *Edward Hall*, in his *Hen. VIII.* out of old monuments, also *Walsingham, pag. 87. 133. & 171. edit. Francofurt. & Florence of Worcester*, and *Henry of Huntingdon*, where they speak of king *Abelsban*, and authority enough will appear against what *Buchanan* writes in lib. 6. & 8. *rennu Scotiarum*, touch-*

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ing the *English* empire. For authorities in law of the same thing, see 11 *Edw.* III. tit. briefe 473. 39 *Edw.* III. fol. 25. 42 *Edw.* III. fol. 2. b. 13 *Hen.* IV. *Brook* tit. appeal 153. 6 *Rich.* II. tit. protection 46. 8 *Rich.* II. tit. continuall claime, 13. 13. *Eliz.* Dyer, fol. 304. a. rot. parliamenti, 21 *Ed. I.* in arce London, fol. 51. & seqq. besides divers originals of matters of that nation yet remaining in the treasuries of records Neither is that of *Godfrey of Malmesbury* unnecessary to be here remembered. He relates, that when *William II.* was offended with *Malcolm III.* of Scotland, that he would not secundum iudicium baronum suorum in curia sua restitutionem regibus Anglorum facere, the Scottish king, id agere nisi in regnum suorum confinis, ubi reges Scottorum erant soliti restitutionem facere regibus Anglorum, & secundum iudicium primatum utriusque regni, nullo modo voluit, & sic impacati ab invicem discesserunt. He places this in 7 *Willielmi II.* When this *Godfrey* lived, I know not. His annals begin with the Saxons, and end in 29 *Hen. I.* He hath much of northern matters, and the same that is in *Roger of Hoveden*, often, and this very page also is in *Hoveden*, pag. 265.

AD CAP. XVII.

5. *A* *Ligni regum.*] But questionless the Saxons made a mixture of the *British* customs with their own; the *Danes* with old *British*, the *Saxon* with their own; and the *Normans* the like. The old laws of the Saxons mention the *Danish* law, *Danelage*; the *Mercian* law, *Mercenlage*; and the *Messaxon* law, *Messlaroutage*; of which also some counties were governed by one, some by another. All these being considered by *William I.* comparing them with the laws of *Norway* (which he most of all affected, mainly, as I think, because by them a bastard of a concubine, as himself was, had equal inheritance with the most legitimate son; You may see for it, *Roger de Hoveden*, fol. 347. & 415.) he *quasdam reprobat* (as the words of *Gervase* of *Tilbury*, in his dialogue de *staccario* are) *quasdam autem approbat* illis transmarinis Neultriac leges, quae ad regni pacem tuendam efficacissime videbantur, edixit; but to indeed, that such laws as he in writing allowed, are, by a denomination from the greater part, called *bonae & adprobatae antiquae regis leges*, by *Matthew Paris*, in his manuscript life of *Frederick*, abbot of *St. Albans*, and *leges Edwardi regis quae prius inventae sunt & constitutae in tempore Aedgari avi sui*, by *Roger of Hoveden*, and *leges acquisitissimi regis Edwardi*, by *Inghilphus*, abbot of *Crowland*, who lived under the conqueror, and brought a copy of them from *London* to his abbey, as he remembers in his printed story. And in a manuscript copy, communicated to me, amongst divers other, by that living treasure of antiquity, and most exquisite monuments, my noble and much discerning friend *Sir Robert Cotton*, and continued by *Peter of Blois*, after that which is in the print, succeed those laws of *William I.* there spoken of with this title in broken French. Ces sont leis & les custumes

qui li reys William grantast a tut le puple de Engleterre apres la conquest de la terre ice les meismes que le reys Edward l'un coin tint de vant lui. Ceo est a savoir, pais a saint Egglise, &c. the context of them throughout being much corrupted. They were, you see, called *St. Edward's* laws, and to this day are. But clearly, divers *Norman* customs were in practice first mixed with them, and to these times continue. As succeeding ages, so new nations (coming in by a conquest, although mixed with a title, as of the *Norman* conqueror, is to be affirmed) bring always some alteration. By this well considered, that of the laws of this realm being never changed, will be better understood.

6. *Et maxime Romani*] Understand not this neither otherwise, but that the *Romans* had their laws in such parts of this land, as they had their most civil government in. I mean in colonies hither deduced. For every colony was but an image of the mother city, with like holy rites, like courts, laws, temples, places of publick commerce, and for the most part with *daumviri*, instead of consuls, and *aediles* and *decuriones* in lieu of a senate. And it is clear, that divers colonies from *Rome* were in *Britain*, as at *Camalodunum*, now *Maldon* in *Essex*, that was deduced to be subsidium adversus rebelles, as *Tacitus* says, & imbuedis sociis ad officia legum. And an old inscription remembers one *Aurelius Bassus*, to be censor civium Romanorum coloniae victricensis, quae est in Britanniae Camalodunum. At *York* was also a colony; an old piece of money of *Severus*, thus,

COL. EBORACVM. LEG. VI. VICTRIX.

Another inscription is justifying the same in *Camden*, pag. 572. although *Aurelius Victor* calls it *municipium*, in his life of *Severus*. Likewise one was at *Chester*, antiently called *Devana*, *Deva*, or *Deurvana*, as we see in *Ptolemy* and *Antoninus*, from the river *Dee*; witness an old coin of *Septimius Geta*, thus inscribed.

COL. DIVANA LEG. XX. VICTRIX.

And a fragment of a stone in *Bath's* walls hath, DEC. COLONIAE GLEV. VINIT ANN. LXXXVI.

Glev. is *Glocester*, as the most learned *Clarendon* teaches. Some think *Colechester* had a colony too. But here are enough to shew, that the laws of *Rome* were used in *Britain*, as in other places where the *Romans* conquered. *Seneca* ad *Albinum* cap. 7. Hic denique populus colonias in omnes provincias misit. Ubique vicit, Romanus habitat; and *Gildas* of this land, non *Britannia* sed *Romania* censetur. So one antiently speaking to *Mars*, *Romulus*, and *Claudius*, under whom the first colonies were deduced hither, in *catalect. vet. poet. lib. 1. tit. 7.*

Cernitis ignotos Latia sub lege Britannos.

After *Claudius*, the *Britons* began to learn the arts, to exceed the *Gauls* in wit and learning and they that at first did linguam Romanam abnuere, as *Tacitus* speaks in the life of *Agricola*, did at length eloquentiam conspiscere. Inde

etiam

etiam, says he, *habitus nostri bonor & frequens toga; paulatimque discessum ad delinimenta vitorum, porticus & balnea, & conviviorum elegantiam; idque apud imperitos humanitas vocabatur, cum pars servitutis esset*; and this is spoken of natural Britons, not colonies. They affected, we see, Roman language, rhetoric, Roman habit, Roman pleasures, diet, and the like. Neither needed Tacitus to have mentioned their affecting the laws of Rome, when they were subject to them as a conquered people. And no doubt is, but they that imitated their conquerors, and neighbour colonies in the rest, were not backward in affecting those laws, for which the languages and rhetoric were most useful. Juvenal speaking of Gaul, (which he calls in *satyr. 7.* — *nutricula caesidicorum*) says in *satyr. 15.*

*Gallia caufidicos docuit sacunda Britannos,
De conducendo loquitur jam rhetore Thule.*

The easier might the use and study of the laws of Rome be received here, after this Claudius his conquest; in regard that those which before, and in ancient time, had the determining of controversies, and the learning of that kind in their hands, were by him forbidden to use any longer their religion, for which they were most of all revered and regarded. I mean, the *Druids*. And when their holy rites were prohibited by the emperor, it is likely enough that the nations governed by them in point of law, as the *Gauls* and *Britons* were, grew regardless, at least remained nothing so respectful of them as before, and so became prone to receive the laws of Rome, which had both conquered them, and also taken away the reverence before given to the *Druids*. That the *Druids* before Claudius were the lawyers, and determined controversies, *Julius Caesar* is witness, *lib. 5.* and *6. de bello Gallico*, compared with the catholic opinion in antiquity of an identity, at least in their office, actions, and learning, in *Gaul* and *Britain*. That *Claudius* took away their religion, *Sueton* is author in his life, *cap. 25.* *Druidarum religionem apud Gallos dirae immanitatis, & tantum civibus sub Augusto interdiciam, penitus abolevit*. With him agrees *Seneca* in his *Apocolocyntosis*. It may well enough be imagined, that the taking it away in *Gaul* extended to *Britain*, which was both the nursery of it, and mother too, as *Julius Caesar* writes. If only to *Gaul*; yet it is probable enough that the *Druids* in *Britain* could not but suffer by it, at least in reputation. For that of *Pliny*, *nat. hist. lib. 30. cap. 1.* *Tiberii Caesaris principatus sustulit Druidas Gallorum*; it is to be referred only to Rome, as *Lipsius* well takes it in *comment. ad Tacit. annal. 12. num. 98.* and in such a sense as *Sueton* speaks of *Augustus's* forbidding them *tantum civibus*. And indeed although after *Claudius*, mention be in *Tacitus*, *Lampridius*, and *Vopiscus*, of them, yet shall you not find any sign of their legal power extant, either in those, or in *Ammianus Marcellinus* that specially remembers them, but only attributes a study of the mysteries of nature, and a *Pythagorical*

learning to them, under *Constantine* and *Julian*, as you see in his fifteenth book. For the matter of colonies before spoken of; he that desires accurate instruction of their nature and particular rights, may see, besides what such as writing of the Roman state universally have of it, *Lips. de magnitud. Romana, lib. 1. cap. 6.* and *Marc. Velfer. lib. 2. antiquit. Augustae Vindelicorum.*

7. *Leges civiles in quantum Romanorum in veteratae sunt.*] The antiquity which he means of our laws before the civil of Rome, is only upon these conditions. First, that the story of *Brute* be to be credited, and then that the same kind of law and policy hath ever since continued in *Britain*. That story supposes him here ecc. years and more before Rome built. But, with no disparagement to our common laws, we have no testimony touching the inhabitants of the isle, before *Julius Caesar*, nor any of the name of it, till *Polybius* in Greek, nor till *Lucretius* in Latin. *Polybius, lib. 3.* speaks of the British isles, and *Lucretius, lib. 6.* hath *coelum Britannum*. Neither is the book *de mundo*, attributed to *Aristotle*, of like age with the falsely supposed author. In that, *Albion* is spoken of, but *Polybius* was before that was spoken, if I deceive not myself. All testimony of later time, made of that which long since must be, if at all it were, is much to be suspected. And though the *Bards* knew divers things by tradition, which they only sung, and so a specious argument is made usually for that common story, because they sung it, yet I see not why any, but one that is too prodigal of his faith, should believe it more than poetical story, which is all one, for the most part, with a fiction. For what were *Bards* but such as sung the praises of old supposed heroes at their pleasure? As *Athenaeus* and *Macrobius*, of them, and, for later authority, you may see in *leg. Howell. Dba, cap. 25.* That the chiefest dignity amongst them was the *Penker* of the country, whose place was of great eminence before others in the *Welsh* court, and his office, when the king was pleased to hear any songs, was *duo carmina, scilicet unum de Deo, alterum de regibus, in interiore parte aulae decantare*. Nor he nor the rest were bound to truth of story, but free to use invention, which they did in making a founder of the British name out of a community of sound. 'Twas as easy to fetch *Brute* out of *Britain*, as it is often called, as it hath been to make *Francio* out of *Francia*, or *Franci*, *Hispanns*, or *Hispanus*, out of *Hispania*, *Scoto* out of *Scotia*, *Angela* for a queen, out of *Anglia*, *Bato*, out of *Batavia*, *Italus* out of *Italia*, and divers such, which are all mere fictions or impostures. Scarce indeed is there a nation in *Europe*, whose deduction from a like name of the first author, is of sufficient credit. All testimonies, any thing near the supposed time of those first authors, being lost. This writer stands on *Brute's* arrival, and speaks of it, *cap. XIII.* Yet if that would make so much for this side of antiquity of our laws, much more is to be had from the antienter and true origination of the *Britons*, which

which is from *Japhet* and his posterity. See *Caunden*. And in the *Greek Scaligeran* chronicle of *Eusebius*, the *British* isles, with all the west, are given by *Noah's* last will and testament to *Japhet*; but so is *Italy* too, and the rest of *Europe*. This way, might an equally strong argument be for the like antiquity of both laws, of those of *Italy* and *Britain*. And it would be such a one as this author uses from *Brute*. For questionless, if *Japhet* and his posterity possessed these parts of *Europe*, as they did, their government was not without laws. But in truth, and to speak without perverse affectation, all laws in general are originally equally antient. All were grounded upon nature, and no nation was, that out of it took not their grounds; and nature being the same in all, the beginning of all laws must be the same. As soon as *Italy* was peopled, this beginning of laws was there, and upon it were grounded the *Roman* laws, which could not have that distinct name indeed till *Rome* was built, yet remained always that they were at first, saving that additions and interpretations, in succeeding ages increased, and somewhat altered them, by making a *determinatio juris naturalis*, which is nothing but the civil law of any nation. For although the law of nature be truly said immutable, yet it is as true, that it is limitable, and limited law of nature is the law now used in every state. All the fame may be affirmed of our *British* laws, or *English*, or other whatsoever. But the divers opinions of interpreters proceeding from the weakness of man's reason, and the several conveniences of divers states, have made those limitations, which the law of nature hath suffered, very different. And hence is it, that those customs which have come all out of one fountain, *nature*, thus vary from and cross one another in several common-wealths. Had the *Britons* received the ten or twelve tables from *Greece* (which in *Rome* was, as *Livy* says, in *immensa aliarum super alias acervatarum legum cumulo, fons omnis publici privatiq[ue] juris*) clearly the interpretations, and additions which by this time would have been put to them here, must not be thought on as if they would have fill out like the body of the *Roman* civil law. Divers nations, as divers men, have their divers collections and inferences; and so make their divers laws to grow to what they are, out of one and the same root. Infinite laws we have now that were not thought on *D.* years since. Then were many that *D.* years before had no being, and less time forward always produced divers new; the beginning of all here being in the first peopling of the land, when men, by nature being civil creatures, grew to plant a common society. This rationally considered, might end that obvious question of those, which would say something against the laws of *England* if they could. 'Tis their trivial demand, *When and how began your common laws?* Questionless it is fittest answered by affirming, when and in like kind as the laws of all other states, that is, *When there was first a state in that land, which the common law now governs:* Then were

natural laws limited for the convenience of civil society here, and those limitations have been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps, saving the merely immutable part of nature, now, in regard of their first being, they are not otherwise than the ship, that by often mending had no piece of the first materials, or as the house that's so often repaired, *ut nihil ex pristina materia supersit*, which yet, by the civil law, is to be accounted the same still, as we see in *τ. tit. de legat. 1. l. 65. si ita §. 2.* Little then follows in point of honour or excellency specially to be attributed to the laws of a nation in general, by an argument thus drawn from difference of antiquity, which in substance is alike in all. Neither are laws thus to be compared. Those which best fit the state wherein they are, clearly deserve the name of the best laws. And none are best or worst but *secundum quid*. But upon this ground more to the purpose might have been said for the *English* common laws, compared with the civil of *Rome*. For it appears that the emperors from *Justinian*, who died in *D. LXX.* of *Christ*, until *Lothar* the II. in the year *CIO.C.XXV.* so neglected the body of the civil law (which now, against an express constitution of *Justinian*, commanding that it should not be read nor taught in any place saving *Rome*, *Berytus*, and *Constantinople*, is professed in every university) that all that time none ever professed it. But when *Lothar* took *Amalfi*, he there found an old copy of the *pandects*, or *digests*, which, as a precious monument, he gave the *Pisans* (by reason whereof it was called *Literna Pisana*) from whom it hath been since translated to *Florence*, where in the duke's palace it is never brought forth but with torch-light, and other reverence. Under that *Lothar*, began the civil law to be professed at *Bologna*, and *Truer*, or *Werner*, as some call him, first made glosses on it about the beginning of *Frederick Barbarossa* in *CIO.C.I.* of *Christ*, and *Bologna* was by *Lothar* constituted to be *legum & juris schola una & sola*. And this was the first time and place of profession of it in the western empire. You may see *Odofredum apud Sigonium de regno Italiae lib. 11. §. 7. & Paul. Merul. cosynogr. part 2. lib. 4. cap. 23.* Why were they so neglected near *DC.* years in the empire, if their excellency were so beyond others, as is usually said by many, that, to the purpose, know nothing of either them or ours? This part of story of them I have noted elsewhere in the preface to the *titles of honour*. And clearly you see the profession of them is not so antient in the western empire, as the latest of time, to which some most ignorantly refer the beginning of the common law; I mean, as the *Norman William*, who arrived in the year *CIO. LXXI.* I think not, that good discretion can, out of any of this or the like, add much honour to, or detract from either common or civil law; yet it is fit to be remembered in answer of such as ignorantly fetch a reason out of the antiquity of the profession of the one. As if the profession begun under *Lothar*, and since this

continued.

continued, was not merely new, and not a re-continuation of what was in use under *Justinian*. But heretofore too much.

Ad C A P. XXI.

8. *T*estes.] But some trials by our law have also witnesses without a jury: as of the life and death of the husband in *dower*, and in *cui in vita*. Examples thereof are in *Bracton lib. 4. tract. 6. cap. 7. 2 Ed. 2. tit. triall* 46. 8 *Ed. 2. cod. tit. 95. 9 Ed. 2. tit. judgment* 231. 2 *Elizab. Dyer fol. 185. a.* and in 13 *Eliz. Dy. fol. 301. a.* In error by an infant to reverse a fine, both inspection and the testimony of four witnesses concur to prove his infancy, and in 26 *Ed. III. fol. 16. pl. 6. a.* a death in *Bretagne*, is said, shall be tried by proofs. But all this is of issues, which properly have no witness whence a jury may be. The course of declarations also at this day shew, that witnesses were respected in the beginning of every action. The conclusion is always *Unde producit sectam*. Which *secta* or *suit* in law-language, is nothing but witnesses to prove his action, as in the counts of *writs of right* they were wont to declare, & hoc paratus sum probare per hunc liberum hominem meum A. B. & si quid, &c. Which was a tender of battle, as the other is of suit or witnesses. See *Glanvil. lib. 2. cap. 3.* And those proofs of the death of the husband in *dower* are called *secta* by *Bracton, fol. 302. a.* and in *Nov. narrat. luit & daccalgn bon*, is only *secta* & *disfrationatio bona*, i. e. good proof to maintain the count. In ancient time this suit, or witnesses, were examined before any other issue, as in 18 *Hen. III. coram rege apud Windfore rot. 13. in dorf. in turr. Lond.* In a *recordare loquellam* that was in the bishop of *Salisbury's* court at *Sunnings*, the action being for a marc, by *Walkelin de Stok*, against *William de la Guilhalle*, the entry is; *Et Willielmus producit sectam suam, & ipsi quos produxit per se discordantes sunt in multis, & in tempore, & in aliis circumstantiis, quia quidam dicunt quod quaedam equa mater ipsius pullani empta fuit, &c. Et quidam dicunt, &c. Et Walkelinus producit sectam, qui concordati sunt in omnibus & per omnia, & dicunt omnes quos ipsi producit per se, &c.* The proofs of both sides are called *secta*. It was either this, or some like call, that *Shard* intended in 17 *Ed. III. fol. 48. b.* in *John Warrein's* case, speaking of a justice that examined the suit; and it appears there, that under *Ed. III.* the tender of suit or proofs was become only formal, as at this day, like the *plegiis de prosequendo*. But in *Hill. 44 Hen. III. coram Rogero de Thurbelby & sociis suis iustitiariis de Banco rot. 16. in dorse*, one *Gilbert Chyeteine*, brought a *replevin* against *William le Foulter*, and the defendant pleads *non cepit, &c. Et hoc offert defendere contra ipsum & sectam suam sicut curia consideraverit. Et quia prædictus Gilbertus nullam sectam producit versus prædictum Willielmum, consideratum est quod prædictus Willielmus eat inde sine*

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die, & Gilbertus in misericordia. See *ad cap. 32.* I omit, that in *Englebery* antiently, in a *nativo habendo*, in proving a deed denied, and such like, witnesses by the common law are required as the special trial.

Ad C A P. XXIV.

9. *W*Apentagias.] In *Ethelred's* laws, which the abbot *John Brompton* hath in a *msl. story, cap. 4. Habeantur placita in singulis wapentakias, ut exeant seniores xii thayni & præpositus cum eis, & jurent super sanctuarium quod eis dabitur in manus, quod neminem innocentem velint accusare vel noxium concellare.* And the laws called the *Confessor's, cap. 33.* say that *Torkshire, Lincoln, Nottingham, Leicester, and Northampton*, call that *wapentacium, quod Angli vocant hundredum, & non sine causa.* For he that was *præfictus wapentacii*, or high constable of the wapentake, came amongst them at the hundred or wapentake court, and with regardful entertainment, they all *cum lanceis suis ipsius balliam tangebant, & ita se confirmabant per contactum armorum, pace palam concessa. Anglice u.* (so say those laws) *arma vocantur pæpnu, & tacceane, confirmare, quasi armorum confirmatio, vel ut magis expresse secundum linguam Anglicam dicamus, wapentac armorum tactus est, pæpnu. arma sonat, &c, tactus est.* Doubtless this deduction of the name favours of the truth. For amongst the old *German*s, whence our *Anglo-Saxon*s came, that used to meet armed in their courts, when any one had spoken, if he were disliked, *fremitu aspernabantur*, if liked, *frameas concutebant, as Tacitus* witnesses; which well includes this touching or striking together of weapons. *Honoratissimum*, says he, *assensus genus est, armis laudare.* The wapentakes, hundreds, and counties, were first instituted by king *Alfred*, about the year *DCCC. LXXX.* Of him, *Ingulphus, pag. 495 b. Totius Angliæ pagos & provincias in comitatus primus omnium commutavit, comitatus in centurias, id est, hundredas, & in decimas, id est, tythingas divisit.* See also *Malmesburienf. de gest. reg. lib. 2. cap. 4.*

10. *Villars.] Villa & villata de Norwiche, de Wallingford,* and the like are in old rolls, which also sometimes call like places, and the same, *burgi* or *civitates.* And the city of *Chichester* is *villata de Cicefria in itin. Suffex. 47 Henric. III. rot. 25. in dorse.* And there *rot. 44. Burgus de Horsham venit per xii. Villa de Bremshe venit per xii. Villa de Sloreham venit per xii. Yet Bramber and Sloreham*, are boroughs as well as *Horsham*; parliamentary boroughs. But also *rot. 38. is burgus de Sford venit per xii.* which is no parliamentary borough. The rest all which now send burgesses to parliament in *Suffex*, as *Lowes, Midhurst, Stryning, Grenfede and Arundel*, are in that circle called boroughs.

11. *Hamletis.] Hameau or bameh*, is a member, or part of some ville or town, as you may see in 14 *assise. pl. 8. & 3. & 4. Ph. & Mar. Dyer fol.*

11 O

fol. 142. b. It came first from *ham* or *helm* in old Saxon, signifying a circuit or territory, *circulum vel septum quo pagi sive territorii cuiuspiam limites includuntur*, as the most noble *Hans Douze* notes out of the records of *Holland*, in *annual. Holland. lib. 2. & 7. fol. 388.*

12. *Annale est.*] But before the statute of 14 Ed. III. cap. 7. sheriffs continued usually in their offices longer.

13. *Nec duobus.*] It should be *nec tribus*, by *stat. 1 Rich. II. cap. 11.*

Ad C A P. XXV.

14. *DE hundredo.*] For the number of the hundredors at this day, see the statutes of 35 Hen. VIII. cap. 6. & 27 Eliz. cap. 6.

Ad C A P. XXVI.

15. *Falsum fecerunt sacramentum.*] The ancient punishment in *attaint*, was as it is here described, and the like in conspiracy for perjury. See *Glanvil. lib. 2. cap. 19. 4 Hen. V. tit. judgment 220. 27. assis. pl. 59. & 46. assis. pl. 11.* The judgment is called the *villanous judgment* in 24 Ed. III. fol. 34. b. See *Bracton* *allo lib. 4. tract. 5. cap. 5. & Flet. lib. 5. cap. 21. & Stamford fol. 175.* And the case in *temp. Ed. I. tit. attaint 70.* is more large in my ms. report of 21 Ed. I. fol. 58. It is brought against the abbot of *Westminster*, as there it is shewed, but the judgment by *Weyland* is in these words, *pour ceo agarde cest court que ceur de l'enquest perdent franchise ley de ceo jour en abant a tous jours, e leur terres e leur chateaus a la volonte le roy, e leur coys a la prison, e John seit atous de cele rent e seit restor de ses damages.* But see now *stat. 23 Hen. VIII. cap. 3.* another judgment in *attaint.*

16. *Nec alicubi recipiuntur in testimonium veritatis.*] Our books exprefs that, by *que mise ne soit en testimoniance de veritye* 24 Ed. III. fol. 34. b. 33 Hen. VI. fol. 55. a. It is titled the loss of frank law, *franch ley* in 27 assis. pl. 59. & 46 assis. pl. 11. that is, he which is thus convicted of perjury, shall be no more *thesfworth*, as *Bracton* calls it *lib. 4. tract. 1. cap. 19. §. 2.* where his words are of such a one, *Legem amittit, & ideo dicitur, quod non est ulterius dignus lege, quod Anglice dicitur, De ne is othes worthe* that is enes gyp of oth broken. Which agrees with *king Knout* his law, *cap. 33.* that one so convicted, ne beo he ðanon forþ after rýpðe. The self-same words almost, being in *leg. Edwardi senioris cap. 3. & leg. Athelstan cap. 25.* That which is *legem amittere*, in this sense in *Bracton*, is *liberam legem amittere* (answering to the loss of frank law) in the entries of judgment against them, and *legem terrae amittere* in *Glanvil*, and sometimes in *Bract.* & *Fleta.* See also *regiam maiestatem lib. 1. cap. 14. §. 5.* Hence may be truly understood that of the grand charter *cap. 29.*—*Nec super eum ibimus nec super eum mittimus, nisi per legale iudicium parium suorum, vel per legem terrae.* I would English it thus: *Neither will we*

enter on his possession nor commit him (for in that of the charter of 17 of king *John*, by which this was made, it is *nec cum in carcere mittimus*, perhaps it should be *carcerem*, as the language requires) *but by legal judgment of his peers, or men of his condition* (that is, by jury) *or by trial of him by oath, or wager, and doing his law.* *Lex terrae* here is only as it signifies in *amittere legem terrae.* And *ley gager*, and a jury are the two trials, as I suppose, there thought on. And indeed in old rolls nothing is more usual than in criminal actions, not capital, and civil, of any kind, to admit *ley gager*, as in attachments upon prohibitions, *quare impedit* and the like, which is against all knowledge and practice of law in later ages. Every one knows that at this day *vadiare legem*, is to offer the oath upon trial that way, and *facere legem* is to make the oath. All which shew that *lex* and *lex terrae*, signify in this notion only the oath of a man not disabled by law: And, in that statute, it is merely the oath upon *ley gager.*

17. *Calumniare potest 35 homines.*] Peremptory challenge is now reduced to xx. by *stat. of 22 Hen. VIII. cap. 14.*

Ad C A P. XXXII.

18. *Si quae supra altum mare, &c. coram admirallo.*] As then, so now, the admiralty hath jurisdiction of things done upon the main sea; and what that court might or may do is shewed and limited by the statutes of 13 Rich. II. cap. 5. & 15. Rich. II. cap. 3. & 2 Hen. V. cap. 6. The first case in our law extant touching marine jurisdiction, is in *temp. Ed. I. tit. avowry 192.* in a *replevin* brought of a ship upon the coast of *Scarborough*, where no mention is of the admiral's authority, as the print is in the abridgment, but consians of it is allowed to the common law. Yet in my ms. report of 25 Ed. I. fol. 82. b. the case is thus more at large, and expressly speaks of the admiral. *William Crake de Holtham* suit common a response a *Robert de Beuso* de play, pur que si aboit pris une lune neç pris de ri. l. en la mer juste la costere de *Scardburn*, & de pieke le amena a *Holtham* en le counte de *Norff. Mumford.* Del hoze qu'il abute conte de une prise fete en la mer que est hoys del conte, issi que si pais se joyñ fit, il ne s'abereint a quel discont mander pur tere benet paps, e demand judgment si ceys pussent de ceo consulter. *Ed' autre part*, il ly sont assigne admiral de par le roy sur la mer a oyer e terminer les plegens de chose fait in mer, e nentendons point que vous volys a euz tolze jurisdiction, &c. *Bery.* Nous avons poer general per my tut Engleterre, mes del poer des admiralz dont vous parles ne savons rien, ne rien de nostre poer a euz volomus assigner. si ceo ne seit per commandment le roy de quey vous ne monstres rien, &c. *Muf.* Sire, le luy on ils dient la neef este pris nest in nul vinere, de que, &c. *Harward.* N'est saint vigne, que si une home occit un autre la, il ferra pris e amene al terre, e pende ausi ben come pur fet ser sur la terre. *Metingham.* Nous vous
dions

dions que nous adons ausi ben poer de con-
nissans de set set en mer come sur terre, dont
agard que vous respondes oultre. Unless they
meant there, that the vifne might be out of the
adjoining county, as in old trials of issues in
Wales, I conceive not their disallowance of the
exception against the place, whence properly
no vifne could be. For such trials of issues aris-
ing in *Wales*, or in counties palatine by the
adjoining counties, see especially 18 Ed. II. tit.
assize 382. 24 Ed. III. fol. 33. 30 Hen. VI. fol. 6.
b. 35. Hen. VI. fol. 30. a. 45 Ed. III. tit. vifne
50. I have transcribed the case according to
the very letters of my copy. It seems by this,
that in those times the common law had consi-
derations of things done upon the *British* sea, however
it afterward kept its limits *infra corpus comita-
tus*, leaving the sea to the admiralty. Some
cases in old records justify it also. In *placit.*
37. & 38. Hen. III. rot. 10. *Devon.* One *Galfre-
dus de Leyfina* brings *trespass* against *Ralf de
Valle torta*, and others, *quare apportaverunt
bona quae fuerunt in navi quae fuit Clementis
de Bolan, quae nuper periclitabatur in costera
de Brikelham, quae bona dominus rex dedit pre-
dicto Galfredo tanquam wreccum maris, &c.*
The defendants plead, in effect, the general
issue, & *sic ad patriam*, although, through want
of form in the declaration, it appears not whether
the goods were taken being in or out of the sea,
yet it seems they held that matter indifferent.
So in *itin. Suffex apud Ciceftiam* 47 Hen. III.
rot. 10. A fragment of a torn roll left in the
bundle, hath this sign of a declaration remaining.
*Rogerus de Louere, & Radulphus de Louere
queruntur de Ricardo de Hatfeuld
proxima ante festum sancti Martini hoc anno se
credebant salvo ibidem
fregerunt navem suam super quendam locum
navis & socii sui circiter
quinque submerserunt.* These words are only
left upon the ninth roll, the rest being by some
wicked hand, purposely, it seems, torn off. But
it is easily conjectured that this was an action on
the case, brought by one that had committed
himself or his goods to the defendant's care for
his passage, with his company, over sea, and
that the offence was, that the defendant had by
negligence made shipwreck on the sea, or some
such like; and though the *assumpsit* at land
might make such an action at this day, maintain-
able at common law, according to the learning in
Dowdale's case, rep. 6. fol. 47. b. yet in those
times so ancient, I cannot imagine the difference
of a contract at land, from one at sea, was thought
on. Likewise in *Trin.* 50 Hen. III. *apud Westm.*
in banco rot. 22. the entry is, *Suff. Abbas West-*
monasterii per attornatum suum obtulit se quo-
to die verus Petrum filium Johannis, Richar-
dum fratrem ejus, Walterum Cheyne, Au-
gustinum filium Joci, Johannem fratrem ejus,
Richardum Andred, Anthonium Clunch, &
Richardum Silkento, de placito cum homines ip-
sus abbatis nuper duci fecissent quandam na-
vem suam per costeram maris prope Dunwicum,
bonis & catallis ipsius abbatis & hominum suo-
rum cariatum, iidem Petrus & alii, simul cum

*Augustino filio Johannis, navem praedictam cum
bonis & catallis praedictis ab hominibus suis
praedictis abstulerunt, & navem & bona &*
*catalla sic ablata detinent, ad damnum ipsius
abbatis & hominum suorum sexaginta librarum,
& contra pacem, &c.* Unless here the ship
was taken upon the sea, *super costeram maris*,
I understand it not. But touching their trials
in the admiralty, in some hands is extant a ma-
nuscript *de l'office del admiralty*, translated into
Latin by one *Thomas Roughton*, calling it
de officio admiralitatis (the use of two copies
of it, with the roll of *Oleron*, written all about
Hen. VI. was communicated to me by that learn-
ed and truly sufficient Sir *Walter Raleigh*,
knight) where indictments and trials are suppo-
sed to be by a jury of twelve, as at common
law. But the book itself is rather a monument
of antiquity, yet not above about Hen. VI.
than of authority, and rather as a purpose of
what was in some failing project, then ever in
use and judgment held authenticall. Most of it
is against both the now received and former pra-
ctice. Yet these things hath it worth observa-
tion, that is, constitutions often mentioned
touching the admiralty of *Henry I.* *Richard I.*
king *John*, and *Edward I.* which are elsewhere
hardly found. In *rot. pat.* 23 Ed. I. *William
Leyburn* is admiral, and often mention is after
that of the admirals of the north and south
seas, the distinction being the *Thames* mouth,
as *Trent* was wont to be for the general elchea-
torship, and is for the justiceship of the forests.
The first mention of the admiral in our printed
law, is in 8 Edw. II. *itin. Canc. tit. corone* 399.
with that, see 48 Ed. III. fol. 3. 40. *assiz. pl.* 25.
Stamford cap. des copiers. Sir *Henry Constable's
case* in rep. 5. fol. 107. & *Hil.* 2. *Jacob. Phi-*
lippe's case in com. banco, & 19 Hen. VI. fol.
7. a. and note that in 7 *Rich. II. Statbam tit.*
trespass 54. a justification is in trespass in these
words, *Nous les prisonous en le haut mere
ovezque les Normans, queux sont enemies le roy,*
judgment si action, and held good. If this
issue offered, rising wholly on the main sea, might
not be tried at the common law, how could it
be good? Either a traverse must have been to
the taking in the count, or else the replication
must have made the issue upon two affirmatives
(which is against the course of our law) or else
questionless they took it in those times triable,
as it was pleaded, by a jury of the vifne, either
adjoining to the coast (which is fittest) or of
the place where the action was laid. See also
46 Edw. III. *Statbam tit. trespass* 38.

19. *Curiae constabularii.*] That court and
the great officer, chief justice of it, hath been
long discontinued. Neither was any continuing
high constable of *England* since 12 Hen. VIII.
when *Edward* duke of *Buckingham* was be-
headed. He was the last high constable, and by
inheritance of tenure from the *Bobuns*, as you
see in 6 Hen. VIII. *Kel. fol.* 170. b. & *seq.*
11 *Eliz. Dy.* 285. b. & vide *rot. fin.* 3 Ed. I.
memb. 14. The court is that, which was titled
the court of *chivalry*, wherein all matters of
arms, treason committed beyond sea, war, and the

the like, which could not be tried at the common law, were determinable *summariè & de plano, sine strepitu & figura iudicii*, as the words are in *part. 1. patent. 7 Ed. IV. memb. 9*. Where it appears the office had been given to John earl of Worcester, to hold plea of such things, *quae in curia consulariis ab antiquo, videlicet tempore domini Wilhelmi conqueſtoris quondam Angliae, progenitoris nostri, seu aliquo tempore cura, traſſari audiri examinari & decidi conſueverunt, aut de jure debuerunt*, who ſurrendering his patent, in the ſame terms with particulars of the office, it is granted to Richard Widevill, earl of Rivers, the king's father-in-law, for life, and after his death to Anthony Widevill. By the 1 ſtatute of 13 Rich. II. cap. 2. & 1 Hen. IV. cap. 14. the office and jurisdiction of the court is beſt deſcribed; you may ſee 37 Hen. VI. fol. 3, & 20. 30 Hen. VI. fol. 6. 6 Hen. VIII. Ketw. fol. 171. b. Brook tit. prerogative 31. Some records are extant of the whole formal proceeding by the law of arms in this court, as ſpecially that of 17 Rich. II. in the tower, concerning the caſtle of Breſt, between Hauley and Rocher. Their trials were by battle or witneſſes. Special commiſſioners have now good part of this jurisdiction. In 2 *part. rot. patent. 23 Hen. VI. memb. 20. Thomas Kent*, doctour of law, is made *ſubconſtabularius Angliae* for life.

20. *Legem mercatoriam.*] That is ſuch as the law of the ſtaple in *ſtat. 2. 27 Ed. III. cap. 2*. Mention is of it in *regiſt. orig. in computo, fol. 135. a. & Fitzh. nat. br. fol. 117. v.* Indeed the nature of this law is well expreſſed by Bartol in *π. tit. mandati vel contra l. 29. §. quaedam* 4. ſpeaking of the merchants court (which name may well be given to the court of *pee poudrous*.) *Nota, ſcilicet hec, quod in curia mercatorum debet iudicari de bono & aequo, omiſſis juris ſolemnitatibus. Hoc non dico quod debeat intelligi non habito reſpectu ad iura civilia, quod eſſet contra, l. bona fides tit. depoſiti, ſed debet intelligi non inſpectis ſolemnitatibus juris, hoc eſt non inſpectis apicibus qui veritatem negotii non tangunt, ut ſi eſſet intentata actio directæ cum competeſſat utilis, vel non erat conteſtata lis, & ſimilia.* For in common ſociety of merchants, and mutual contracts, equity and good conſcience rather than ſtrict law is required. Tryphonius *π. tit. depoſiti vel contra l. 31. Bona fides quae in contractibus exigitur, acquiratur ſummam deſiderat.* A ſpecial caſe of this law merchant, is in *itin. Verb. 2 Edw. II. mſ.* where John Combon brings debt *ſecundum legem mercatoriam* upon a tally, againſt another merchant, and renders ſuit by two witneſſes; the defendant wages his law, but the judgment is thus by Ormeſby pronounced. John de Combon marchand pozt un biſet ciens deus un Rauf marchand, & demande bi. marks par un juſſicier ſomme ſelon la ley marchand (it had been commenced by juſſicies, and came out of the common place into the cire) & ad mis avant un taillie la quelle il tender a prouver per deus & per Richard & par Geoffrey, que eſſeyent al blee meſure (the debt was due for

corn) & al lierret, mes bous per voſtre ley bous boudes coveer la quelle cest cozt en cco cas ne boet nup reſciber, & reſuſa la prouve que il bous tend ſelon ley marchand & ſelon la nature de ſun beſſe, per que agard cest cozt que John reſcibere la debt vers vous come vers non defendu, & ſes danmages de cent ſous. See for this matter of ſuit, ad cap. XXI.

Ad CAP. XXXIII.

21. *At agentes proinde leges civiles ad Angliae regimen producere.*] I confeſs I here underſtand him not. What kings of England ever deſired the civil laws of Rome? I have read of a proteſtation againſt them in parliament by the king and lords, which you may ſee in *rot. proceſſ. & jud.* of the appeal of Thomas duke of Glouceſter, and others, againſt Alexander archbiſhop of York, Robert de Vere, duke of Ireland, Michael de la Pole, earl of Suffolk, and Robert Treſilian, chief juſtice, in *parlamento W'eſtm. 3 Febr. anno 11 Rich. II.* where, upon default of the appellees, the appellants deſire that the court would proceed to judgment. Sur quoy les ditz roy noſtre ſeignior & ſeigniors du parlement priſſent deliberation tanque lendemain le marcdy pprochein enſuivant, a quel temps les juſtices & lergeants & autres ſages du ley de roialm, & aurint les ſages de la ley civil ſeuront charges de par le roy noſtre dit ſeignior, de donner loiall counſeil as ſeigniors du parlement de durement proceder en la cauſe de l'appel ſuſdit, les queux juſtices ſergeants & ſages de la ley du roialm, & aurint les ditz ſages de la ley civil priſſent ent deliberation, & reſponderont, as dits ſeigniors du parlement, que lis avoient veue & bien entendue le tenoz du dit appel, & diſoient que meſme l'appelle ne fuſt pas fait ne aſſerme ſolonque l'oyne que l'une ley ou lautre requierit. Sur quoy les dits ſeigniors du parlement priſſent ent deliberation & avieſement, & per aſſent du roy noſtre dit ſeignior, & de leur commun accoyd eſtoit declare que en ci haut crime come eſt pretendur, en cest appelle, que touch le perſon du roy noſtre dit ſeignior, & le ſtate de tout ſon roialme, perpetre per perſons que ſont peccs du roialme oveique autres, la cauſe ne ſerra alioys deduc que en parlement, ne par autre ley que ley & cours du parlement, & q'il appartient as ſeigniors du parlement, & a leur franchiſe, & liberte d'ancien cuſtume du parlement, deſſe ſuges en tieur cas, & de tieur cas apugger per aſſent du roi, & que enſi ſerra fait en cest cas per agard du parlement, pur ce que le roialme d'Engleterre n'eſtoit devant ces heures, ne al' enrent du roy noſtre dit ſeignior, & ſeigniors du parlement, auques ne ſerra rule ne gouverne per la ley civil, & aurint leur entent neſt pas de reulir ou gouverner cy haute cauſe come cest appel eſt, que ne ſerra alioys trie ne termine que en parlement come dit eſt, per cours proceſſe & oyne uſe en ſcun court ou place plus bas deins meſme le roialm, queux courts & places ne ſont que executoz d'aunciens leys & cuſtumes du roialme & ordinances & eſtablissements du parlements. Et fuſt avie au meſmes les ſeigniors du parlement per aſſent du roy noſtre dit ſeignior, que cest appel fuſt fait & aſſerme bien & adets durement, & le proceſſe d'icelle bone

done & ferme solent les leys & cours du parlement, & par tiel l'agarderoit & suggereroit. I remember also king Stephen's publick edict against the laws of Italy, but remember not any story or authority teaching that any of our kings would have had them here used. That of Stephen is related by that noble and most learned friar Roger Bacon in his *compendium theologiæ*, or his *opus minus* (both those names are of one mf. book) where speaking of the civil laws of Italy, and that they are abused, and too much affected by clergymen, leaving their profession to study those laws, he thus adds; *Præterea omne regnum habet sua jura quibus laici reguntur; ut jura Angliæ & Franciæ; & ita fit justitia in aliis regnis per constitutiones quas habent, sicut in Italia per suas. Quapropter cum jura Angliæ non competant statui clericorum, nec Franciæ, nec Hispaniæ, nec Almanniæ, similiter nec jura Italiæ ullo modo. Quod si debeant clerici uti legibus patriæ, tunc est minus inconveniens ut clerici Angliæ utantur legibus Angliæ, & clerici Franciæ utantur legibus Franciæ, quapropter maxima confusio clericorum est quod hujusmodi constitutionibus laicalibus subduntur colla. Rex quidam Angliæ Stephanus allatis legibus Italiæ in Angliam publico edito prohibuit, ne ab aliquo retinerentur. Si igitur laicus princeps laici principis alterius leges respueret, multo magis omnis clericus deberet respuere leges laicorum. Adde etiam, quod magis concordant jura Franciæ cum Angliæ, & e converso, propter vicinitatem regnorum, & communicationem majorem gentium illarum quam Italiæ & illarum. Quare deberent magis clerici Angliæ subijcere se legibus Franciæ & e converso, quam legibus Lombardiæ.* This was a kind of invective against the receiving of the civil law amongst the clergy in any other nation, saving that wherein it was first bred, that is, the Italian. Our stories have no mention of this edict of Stephen. But it is in an author of better authority (in regard of his time) than friar Bacon; I mean John of Salisbury living under Hen. II. He in his *de nugis curialium*, lib. 8. cap. 22. speaking of such as too prophanelly meddled with what the clergy had to do, goes on with, *Alios vidi qui legis libros deputant igni nec scindere verentur, si in manus eorum pervenirent jura vel canones. Tempore regis Stephani a regno jussæ sunt leges Romanæ, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis afferaverat. Ne quis etiam libros retineret edito regio prohibitum est, & vicario nostro indictum silentium. Sed, Deo faciente, eo magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare.* Whereas friar Bacon takes it clear, that he prohibited the civil laws, this John of Salisbury (a man of great place and authority both with the king and pope) seems to affirm it only of the canon law: for he remembers it as an offence to the church. Indeed in archbishop Theobald's time, both the canons and civil law began to be published, and it is like enough that he might bring in Ivo's or Gratian's decree. Ivo's was written in time of H. I.

and Gratian's under king Stephen. That Theobald was before abbot of Bec in Normandy, and went to Rome for his pall, and so, it seems, brought those laws home with him in 3 *Stephani regis*. It is marvel that our stories are so silent of this of king Stephen. But see the monks *sub anno 1139*, and especially *Guil. Malmesb. hist. novell. 2. fol. 103. b.* touching the council of Winchester, where the ground of his prohibition perhaps shews itself.

Ad C A P. XXXIV.

22. **Q**uod principi placuit.] That is Ulpian in *1. tit. de constit. princip. l. 1. Quod principi placuit legis habet vigorem, utpote cum lege regia, quæ de imperio ejus lata est, populus ei & in eum omne suum imperium & potestatem conferat.* The same is in *instit. tit. de jure nat. §. sed & quod.* And thence have the Greek lawyers their *ἐπε δόξου τῷ Κασιτῇ νόμος ἐστίν*, as Harmenopolus a judge of Thessalonica, expresses it, *prochein. lib. a. tit. a.* And the emperor is in *near. diatax. 105. cap. 2.* titled *νόμος πολυτικός*, a living law. The two codes of Theodosius and Justinian, the Gregorian and Hermogenian codes, the *nearæ diataxeis*, or authentic, and the rest of the *novellæ*, are nothing but constitutions by the emperors, to whom the state of Rome permitted all by the *lex regia* that was before in the people of Rome.

Ad C A P. XXXIX.

23. **P**rolem ante matrimonium.] This point of civil law, is text in *C. tit. de naturalibus lib. l. 10. c. unguis. Quo modo* (says Justinian) *non est iniquissimum ipsam stirpem secundæ posteritatis priorum quasi injustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt justii filii, & nomen & ordinem consecuti.* For the birth of the first is often cause of the marriage following. But it is limited by some doctors, that the woman be before in concubinate, in familia retenta, that there be indubitatus affectus sicut in uxore, &c. as you may see in *Bartol. ad finem 1. de concubinis. Mynsinger. ad instit. de nuptiis §. aliquando. Gothofred. ad novell. 89. cap. 15.* The canon law agrees with the civil in this matter, as is shewn in an epistle of pope Alexander III. to the bishop of Exeter in *Ext. tit. qui filii sint legit. c. 6. tanta est vis.*

Ad C A P. XL.

24. **S**i bonus est bastardus.] Yet see Tiraquell. *de nobilitate, cap. 15. & Pontas Hentzerus's* collection touching bastards at the end of his *De veteri Belgio*, and you shall find, that most of the brave spirits and able, of the former times, are in the catalogue of famous bastards. Remember Euripides in his *Andromache*:

Νόβω τε (says he) πολλὸν χρησιμὸν αἰετοῖσιν.

Many bastards are better than legitimates.

AD C A P. XLII.

25. *Partus semper sequitur ventrem.*] That is in respect of being free or bond. In *liberali causa, matris non patris inspicitur conditio* C. tit. de lib. causa l. 28. avi. & l. 42. placuit. & de rei vendic. l. 7. partum. where the DD. dispute this point. But in matter of honour, or, as it were, hereditary office, their law is otherwise, as you may see in C. tit. de decurionibus, l. 22. eos. l. 36. exemplo. l. 44. nullus & tit. de murilegulis l. 15. qui aut. But the true reason was upon this; that where marriage or jura connubii could not be, there always *partus sequebatur ventrem*, in regard no legal father was of such a birth; and the *jura connubii* extended, before christianity received, only to freemen. *Ulpian* in his *tituli, tit. de his qui in potestate sunt*, hath these words, which are more worth than all the barbarous doctors comments. *Connubio interveniente, liberi semper patrem sequuntur; non interveniente connubio, matris conditioni accedunt; excepto eo, qui ex peregrino & civis Romana, peregrinus nascitur; quoniam lex Mensia* (from whom that law is so called I remember not) *ex alterutro peregrino natum deterioris parentis conditionem sequi jubet. Ex civis Romano & Latina, Latinus nascitur, & ex libero & ancilla, servus, quoniam cum his castius connubia non sint, partus sequitur matrem.* For his speech of a Roman's marrying with an Italian woman, not a Roman, believe it not without examination of such story as you may find collected in *Carol. Sigon. de antiq. jure civ. Rom. lib. 1. cap. 9.* and others dealing with that subject. But clearly it is true generally, that where *jura connubii* were not, there the Roman law makes the issue follow the mother, as the law of nature requires, which the same *Ulpian* saith also in *1. tit. de statu hominum l. 24. lex.* in which title l. 19. *Celsus* agrees with what we have transcribed from *Ulpian*. And the marriages with bond persons, were always accounted but *contubernia*, and not *connubia*, and they were stiled, *contubernales*, not *conjuges*, as appears in *1. tit. de legatis 3. l. 41. uxorem §. 2. codicillis, & C. tit. de inest. nuptiis l. 3. cum ancillis.*

25. *Mulieres honore maritorum.*] The text is not vouched out of the true place, it is in C. tit. de incolis l. 9. and also in C. tit. de dignit. l. 13.

AD C A P. XLIV.

27. *Proximis de eorum sanguine.*] The civil law first gave the wardship (of males till xiv. of females till xii.) to the *agnati*, or those *qui per masculos conjunguntur*, and this was by the laws of the xii tables, as appeareth, *1. tit. 4. de legitimis tutoribus, l. 1. Instit. tit. de legit. tutela.* But the difference betwixt *agnati* and *cognati* both in inheritance, as also in wardships, *Justinian* took away in

Authent. 118. cap. 5. and this is that which is here spoken of, and so is that law at this day.

28. *Ex parte matris.*] This matter of socage wardship is grounded upon that ancient ground, held to this day regularly. *Nunquam custodia alicujus de jure alicui remanet de quo habeatur suspicio, quod possit vel velit aliquod jus in ipsa hereditate clamare.* *Glanvil* hath it *lib. 7. c. 11. & Bracton lib. 2. c. 37. §. 6.* which is the same in substance in *Littleton §. 123.* and *Breton cap. 66.*

29. *In altibus bellicis.*] For, the ground and cause of knight-service wardships, was in this, that the lords of whom the infants held, might bring them up till full age, and instruct them in military performances, that so they might be better able to do their services by which they held; which because they could not do in their infancy, the profits of the land was, as at this day, taken by the lords to supply the defect of service. Neither is this custom of wardship so new, as *Randolf Higden* in his *Polychronicon*, or rather some others not understanding him, ignorantly make it, by supposing the beginning of it here under *Hen. III.* Clearly wardships were before and under the *Normans*, at least. See the *grand customier*, and *Glanvil, lib. 7. cap. 9.* Neither, if *Higden* himself had understood those words in his chronicle, which he took out of a former, written by another monk of *Chester*, which I have seen, had any authority there been for *Henry III's* beginning them. His words are these, *Sub anno 1224. & 6 Hen. III. magnates Angliæ concesserunt regi Henrico wardas hæredum & terrarum suarum, quod fuit initium multorum malorum in Angliæ.* An old chronicle in that inestimable library of *Sir Robert Cotton*, written by another of *Higden's* convent, under the same year; *Magnates Angliæ reddiderunt wardas suas regi, quod fuit initium malorum.* This monk knew what he said, and used the word *wardas* chiefly for forts, castles, honours, and the like, by which the possessors preserved their safety in those troublesome times. For at *Northampton* all such were rendered to the king by the nobility, upon the exaction of *Hybert de Burge*, chief justice, as both *Matthew Paris* and *Floriegens* express in these words; *Reddiderunt singuli castella, municipia, honores & custodias regi quæ ad coronam suam spectare videbantur.* Perhaps *custodias* might here comprehend the wardship too of some heirs: But if so, yet they were such as some great men possessed by reason of ancient tenures, and the king would them have with the castles, and fortresses by others held, that he might enjoy them with their inheritances, as part of security against the barons. No such intent is any of the elder monks, as some would extract out of *Polychronicon*. Neither was that giving of wardships to the king, other than as if the nobility should now give all their wards to the king; supposing that the story were chiefly of giving wardships of body and land in the common sense of *wardae*, as *Higden* misreports it. But for the true understanding of that in story, take

Rot.

Rot. Fin. 6 Hen. III. memb. 4. where a recital is, *Provisum est de consilio archiepiscopi Cant. & episcoporum Angliae & H. de Burgo justitiarum nostrri & comitum & baronum nostrorum quod a die sancti Barnabae apostoli proximo praeterito caperentur in manum nostram omnia dominica nostra, &c.* and hereupon writs go into all shires, to seize into the kings hands all such lands, castles, forts, manors, &c. But for the antiquity of wardships in Britain, both England and Scotland, see also Hest. Boet. l. 11. Buchanan rer. Scot. l. 6. & 10. & leges Malcolmii 2.

Ad C A P. XLVI.

30. **D**Uodecim denariorum valorem excedat.] So is it understood in the statute of *West. 1. cap. 15.* that speaks of indictments of *petit larceny que n' amount oultre le value de xii. deniers.* And therewith agrees *isin. Canc. 8 Edw. II. tit. corone 404. 406. & 415.* But by *Breton. cap. 15.* value of *xii d.* without more, makes it capital felony. So are also opinions in *18 Assis. pl. 14. 22. Assis. pl. 39.* See *Stamford lib. 1. cap. 15.*

Ad C A P. XLVII.

31. **I**N universitatibus.] Indeed the study of the common law hath not place in our universities of *Oxford* or *Cambridge*, because another university (the inns of court) is appointed for it. Yet the statutes of the university of *Cambridge, earum legum* (says doctor *Cowel* in his epistle before his institutions, as he calls it, of the laws of *England*) *quas habet patria nostra, imperitos nos esse prohibent, ut differentias exteri patrique juris sic cognoscamus.*

Ad C A P. XLVIII.

32. **G**Allica.] Touching this, *Ingulphus*, abbot of *Crowland*, at the conquest

thus: *Ipsum etiam idioma (Normanni) tantum abhorrebant, quod leges terrae, statutaque Anglicorum regum lingua Gallica tractarentur: & pueris etiam in scholis principia literarum grammatica Gallice, ac non Anglice traderentur; modus etiam scribendi Anglicus omitteretur, & modus Gallicus in chartis & in libris omnibus admitteretur.* And *Robert Holkot*, a learned dominican friar in *lett. xi. super sapientiam.* Narrant historiae quod cum *Willielmus dux Normannorum regnum Angliae conquisivisset, deliberavit quomodo linguam Saxoniam posset destruere & Angliam & Normaniam in idiomate concordare, & ideo ordinavit quod nullus in curia regis placitaret nisi in Gallico, & iterum quod puer quilibet ponendus ad literas addiceret, Gallicam, & per Gallicam Latinam, quae duo usque hodie observantur.* He says the *French* continued till his time, for he died in the great plague *24 Edw. III.* but by statute of *36 Edw. III. cap. 15.* it was altered, which is the statute this author speaks of.

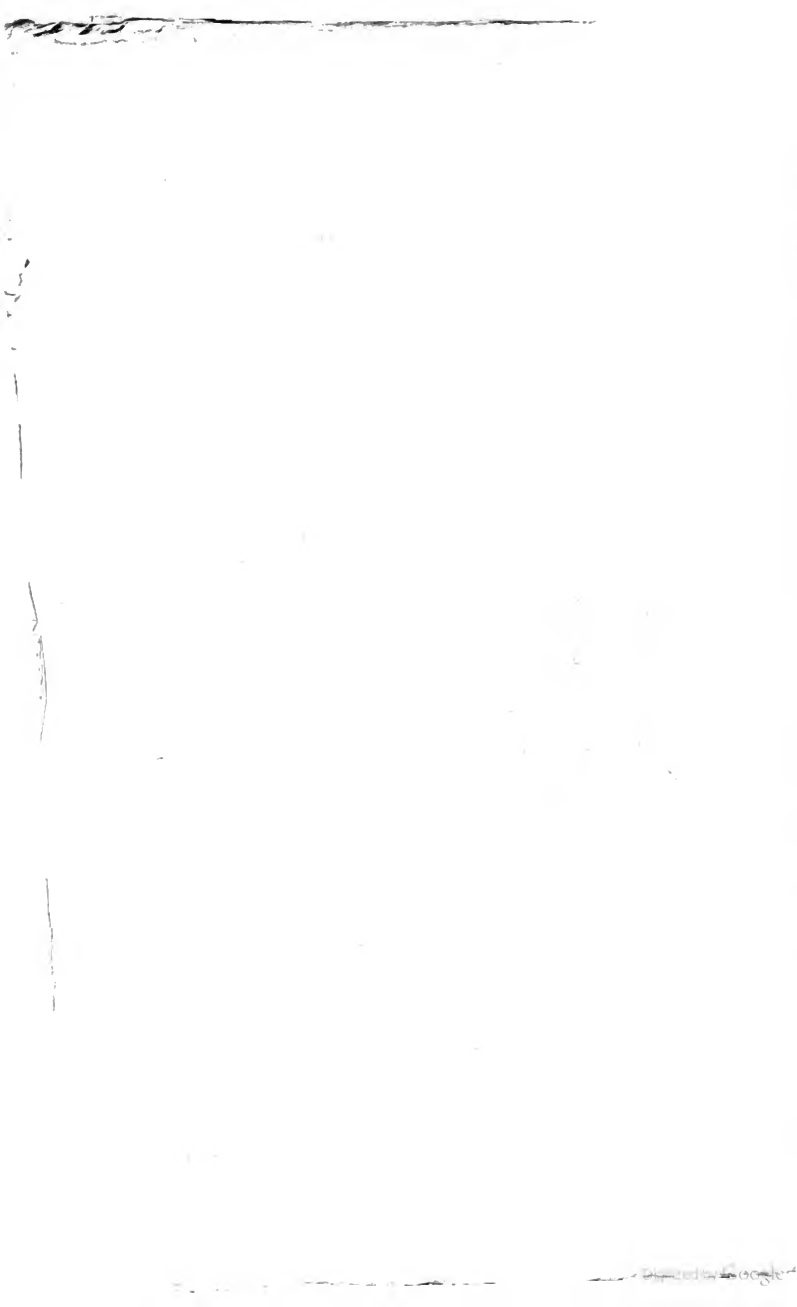
Ad C A P. LI.

33. **A**D pervisum.] This, *Chaucer* remembers in his serjeant,

*A Serjeant at law ware and wisse,
That often had been at the persw.*

It signifies an afternoon's exercise or moot, to the instruction of young students, bearing the same name originally (I guess) with the *parvisae* in *Oxford*, as they call their sitting *generals* in the schools in the afternoon; which ingeniously, I confess, I first learned out of *Mr. Wake* his *musae regnantes*, pag. 195. where he divides the *quodlibets* or *disputationes magnae*, which are their exercises of regent masters in the forenoon, from *parvae*, that is, scholar's exercise in the afternoon *Has* (are his words) *quia iis inferiores, parvas, jam etiam corrupto nomine, parvillas dicere consuevimus.*





N O T E S

O N

Sir Ralph de Hengham's
S U M M A E.

V O L. III.

II Q

A D

LECTOREM.

HAUT importunum est, ut de *scriptore* isthoc jam nunc publici juris facto, de opere ipso, de *sermone* denique *Aristarchis* satis in viso, & instar portenti (ut reliquus fere, quo jus *Anglicanum* conscribitur) habito, paucula praelibentur. Ex iis erat *Radulphus de Hengham* iustitiarius qui, quod lites suas fecissent postulari, & repetundarum damnati, non modo gravissime anno 16 *Edwardi* primi, cum in *Angliam* ex *Aquitania* remearet, multabantur, sed etiam ordinem amittebant. Privatis, sive centum viralibus, judiciis, hac tempestate, praerat iudex primarius (quem capitalem iustitiarium de communi banco phrasi dicimus forensi) *Thomas de Weyland*, publicis, *Radulphus*; capitalis *Angliae* iustitiarius vulgo nuncupatus. Uterque ordine lum-motus. *Radulphus* VII. CLO. libris luebat; verum *Thomas* ille bonis omnibus exutus exulabar, quod veteri etiam jure *Romanorum* erat nonnunquam repetundarum poena, uti ad *legem Juliam* docet *Julus Paulus*. Hic autem, postquam in principis redierat gratiam, summus iudiciorum privatorum suffectus est praefectus. Et hunc & illum ita memorat vetustum annalium scriptor,

Thomas de Weyland en hanc pimes nome
Per agard de court, le reign ad forture.
Sir *Raufe de Hengham* ad tant dispute
Que du banc le roy perdu ad le sce.

Plura de iis, caeterisque, sub id tempus, iustitiarius poena obnoxiiis, habes apud rerum *Anglicarum* confarcinatores vernaculos. Ex eadem ortus esse videtur familia, ex qua *Willielmus* filius *Adae de Hengham* & *Richardus de Hengham*; qui in pago *Norfolciensi*, plerunque *Theofordiae*, iustitiiarii ad *assisas* capiendas & ad *gaolam* deliberandam, sub initiiis *Henrici* tertii, in * archivis saepius memorantur. Obiit anno salutis reparatione CLO. CCC. IX. hoc est anno *Edwardi* secundi secundo; quod ex actis publicis transactionum, quas *finis* appellamus, cognoscitur. Marmore ejus sepulchrali, in *D. Pauli* aedibus, restant inscripti, literis fugientibus, versiculi hi miseri.

Per versus patet hos, Anglorum quod jacet hic flos;
Legum qui tuta distavit vera statuta,
Ex Hengham distus Radulphus vir benedictus.

Summas haec, magnam *Hengham*, & parvam *Hengham* vocant. Utraque in jus vocandi seu vadiandi, excusationum, & exceptionum, in actionibus maxime de *reſto*, de *dote*, & de *assisa*, formulae & verba solennia continentur; quae tamenſi aevo nostro vix sint in usu, praxi nimirum juris alio plerunque vergente, inde tamen colligas licet quanta fuerint apud *priscos* juris *Anglicani* peritos auctoritate, quod in optimae notae coddi. vet. stat. mſſ. ambae velut agendi normalae olim a pragmaticis circumferebantur. Accedit etiam, quod quisquis ille fuerit qui magnam *chartam* & quae sequuntur *Latine* & *Francice* conscripta in notissimo illo juris enchiridio, primum *Anglico* donaverit idiomate, has etiam *Radulphi*, ut lectore ante alia dignas, transulerit, alteramque michale *Hengham*, alteram *luttie Hengham* inscripserit. Manuscriptum exemplar illius versionis aetatem *Edwardi* sive II. sive III. redolentis, penes est virum cl. multijugae item eruditionis, & vetustatis pericissimum *Franciscum Tate* I C^{um}. Stylus scriptoris, vel potius ipsa styli vocabula, satis sunt a *Latinitate* aliena, uti & veteres fere qui restant autores, constitutiones, atque acta publica juris

* Rot. pat. 10 Hen. III. mem. 11. & alibi eodem rot. & claus. 11. Hen. III. memb. 8.

NOTES

ON

Sir Ralph de Hengham.

PAG. 1. *Primericiis.*] He means *prothonotaries*. The word is often in constitutions of the time of the declining empire; as *primericius sacri cubiculi, lampadariorum, officiorum palatinorum*, and the like. Amongst them was *primericius notariorum*; that is, the emperor's chief notary. *Aklat. ad cod. 12. tit. 7.* *Primericius, notarius principis dicitur, & honore inter notarios primus, sicut sequens dicitur secundarius. Krep. n. ceram significat, xipoua, tabulam signatam, in qua antiqui scribebant; ab hujusmodi igitur tabulis dicti sunt primericii.* Those *primericii notariorum* in Rome, although discharged from their office, yet remained in equal degree of honour with the proconsuls, as appears in a conflict. of *Gratian, Theodosius*, and *Valentinian* in *cod. Theodos. lib. 6. tit. 10.*

Pag. 2. Modus cyrographandi.] It seems by this, that either we have not all his first copy, or else he never finished what he here promises, for we have no more of it.

Pag. 5. f. filio Alani comiti de Arundel.] By marriage of a *Fitz-Alan* with the heir female of the *d' Aubignies* earls of *Arundel*, came that surname, which is here, as a word literally signifying, turned into *Latin* by *Filius Alani*. It was usual in those elder times to do so. As to express *Champernou*, by *de Campo Arnulphi* 7 *Ed. III. fol. 35. a. & 49. b.* and the rolls have commonly *Filius Petri, Filius Herberti, de Bello monte, de Bello sago, de S. Leodegario, de Monte Canisio, de Monte forti, Mortuo Mari, for Fitz-Peter, Fitz-Herbert, Beaumont, Beaufage, St. Leiger, Mount-Chenys, Mount-fort, Mortimer*, and such more. So in 29 *Ed. III. fol. 30. b.* *Colle beſide Somerſham* and *Colle juxta Somersham*, although *Colle* indeed appeared in the record to be in *Somersham*, are held all one in expressing the name of that place. In 30 *Ed. III. fol. 2. b. villa de Pontefraſſo* is *Pomitet* in a *praeſcipe*, and in 38 *Ed. III. fol. 28.* *Newark* is taken in the name of the priories of *Newark*, as a name signifying a new work. But in 25 *Ed. III. fol. 38. a. apud villam Sancti Petri* is disallowed for *apud Petreſton*, though one interpret the other; and the case of *P. 11 Ed. III. tit. quid juris clamat. 2.* in the m. is, that *John de Brayford* brought the writ against *Isabel Peverel*, grounded upon the note of a fine, whereby *Gilbertus filius Stephani* had granted the reversion of the manor of *Wolward* which

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Isabel held for life, to *John* in fee; and *Parn-ing* took exception to the note and writ, because this *Gilbert's* father's name was *Richard Fitz-Eſteven* which *Richard* gave the manor in tail to *Isabel*, &c. All that is stood on, in the argument, is that of the name; and in the m. occurs also, *ſey fuſt dit que tout fuſt il utlagbe per tiel nome que il ne ſceit pas per tant atteint, &c. & auri ſil fuſt endite per tiel nome que home ne ſceit pas de ly atteindre, &c.* and ſo *Stronar* (as in the print) gives judgment against the conuſee. This case is remembered in 11 *Aſſiſ. pl. 4.* And by 11 *Ed. III. tit. eſtoppell* 228. *Filius Thomae* in *Latin* cannot be a ſurname; but, that it is a good plea, to ſhew that the party ſo deſigned had a father of another name, it is held 40 *Edw. III. fol. 22. a. 44 Ed. III. fol. 12. b.* and the law hath been lately ſo taken, as you ſee in *Osborne's* case, *Rep. 10. fol. 132. b.* For other authority, how *ſilius* may be underſtood either as part of a name, as for a legitimate ſon, or as a note of only natural relation, ſee 38 *Ed. III. fol. 22. Edw. III. fol. 11. a. & 25. a. 3 Hen. IV. fol. 14. a. 30. Aſſiſ. pl. 51. per Seton. 14 Ed. III. tit. eſtoppell* 173. 13 *Rich. II. tit. breſſe* 645. 10 *Edw. IV. fol. 12. a. Curſon's* case.

Id. Eadem gratia Lincolnienſi episcopo.] Nothing is more uſual of that time, than to find biſhops, abbots, priors and the like, to have *Dei gratia* in their titles: But later ages hath appropriated it to kings. *Lewis XI. of France* would not endure, that *Francis* then duke of *Bretagne* ſhould uſe it. See *Bodin. de republica, lib. 1. cap. 10.* and others noted in the titles of honour, *pag. 116.*

Pag. 6. In liberum burgagium.] As free ſocage in the country, of lands, ſo free burgage in boroughs, and cities, in the tenure of houſes, regularly; and they are the two baſe tenures in regard of knight's ſervice. *Burgagium, ſocagium, & ſocodum militare*, make uſually *Bracton's* tripartite diſviſion. See him *lib. 4. traſſ. de Aſſiſ. mort. antecelloris cap. 14. & in cap. praecedent. §. 3.* of burgage: *Revera terminatum eſt quod poteſt legari, ut caſtallum, tam haereditas quam perquiſitum per barones Londoniae & burgenſes Oxoniae, & ideo verum eſt quod in burgis non jacet aſſiſa mortis antecelloris*; that muſt be underſtood only of ſuch boroughs as had by cuſtom their lands deviſible. See *burgages deviſibles* in

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ſtat.

stat. 11 Ed. I. *Acton Burnell*, *Bract.* fol. 272. a. and *Thorpe* 21 Ed. III. fol. 21. b. Tradesmen that held these burgages are the *burgenses* intended in stat. *Merton* cap. 7. where an heir of a gentleman (a tenant by knight's service) is disparaged, if married to *burgensis* or *villanus*; i. e. either *tradesman*, or *husbandman*.

1b. Vel maritagium.] Although *Hengham* lived and wrote after *Westm.* 2. yet this, as other examples of his *writ*s of right are, is of elder time than the statute. *Bracton*, fol. 329. a. hath this very writ in substance, as of his time, and thither must *liberum maritagium* be referred. For clearly since the statute of *Westm.* 2. a writ of right would not lie for lands held in frank marriage.

1b. Nec pro omni servitio.] But *Bracton*'s writ with that tenure hath expressly, *pro omni servitio*.

1b. Portandi brevia.] Now *brevia* is appropriated to the signification of the king's *writ*s. Understand it in this tenure, which is mentioned also in *Bracton*, fol. 328. b. and *Regist. orig.* fol. 2. b. for letters of message, and the like. For, because the king's writ was a short letter of command, therefore had it the name of *breve*. So *Bracton*, lib. 5. de except. cap. 17. §. 2. and, in the civil law, both *breve* and *brevia* are in like sense. You may see C. tit. de *convenendis sibi debet*. l. 5. de *apochis public.* l. 1. & tit. 42. lib. 1. restored by *Gothofred*. Very often also for letters, *brevet*s and *brevia* occur in *Theodosius*'s code, *Cassiodorus*'s precedents, *Symmachus*'s epistles, other of that time. The later *Grecians* called it *βρίσιον* & *βρίσιον*; yet those are as ancient as *Julian* and *Ensebius*, who use them, and those, which wrote them, they called *βρίσιον*, or *brevi-atores*, which I read in *Justinian*'s auth. 105. and an old glossary of the law interprets *βρίσιον*, by *ἡ ἐπιστολή*. Letters of presentation given by an earl in 45 Ed. III. tit. exchange 10. are titled, *brief* de presentation.

Paq. 7. Quando xi. solidi cap. de feuto.] So in *Bracton* also is the service expressed. But the *Register*, fol. 2. a. hath a note that makes this form obsolete. Now it should be, *per servitium quartae partis unius feodi militis*, &c. Eſcuage is here apparently meant. Neither had the antients any more particulars in denoting it, neither by them was it restrained to war against the *Scots* or *Welsh* only, as by later authority it seems to be, where only *Scotland* and *Wales* are spoken of, as in *Littleton*, *Fitzb. nat. br.* fol. 83. C. *Regist.* fol. 88. a. 19 *Rich. II.* tit. gard. 165. *Plovid. com. c. Rice Thomas* fol. 129. b. and elsewhere. In the red book of the exchequer, *Alexander* arch-deacon of *Shrewsbury* under *Hen. III.* relates an eſcuage of two marks out of every knight's fee, in 7 *Hen. II.* for the enterprize against *Tholouse*, in 8 *Hen. II.* one mark for the same purpose; in 18 *Hen. II.* xx s. *pro exercitu Hiberniae*, and others he hath for war in *Normandy*, *Poitiers*, elsewhere, under *Rich. I.* and king *John*. And that they were such as are now understood in our tenure by eſcuage, will more openly appear

in rot. claus. 16. *Johannis* memb. 24 in dorſo, where the *ſcutagia* *Pictaviae* are at large in a catalogue; as *Will. de Cantebria*, *quia habuit milites suos cum domino rege in Pictavia, habet ſcutagium*. And there is also, *Mandatum eſt domino Petro Wintonienſi epiſcopo*, he was then chief juſtice of England, *quod habere faciat Willielmo comiti Arundell ſcutagium de xvi. feodis militum quae Robertus de Tateſhale, qui eſt in cuſtodia ſua de domino rege tenet in capite ſ. de feuto 111 marca*, which paſſage I ſufficiently underſtand not. If *Tateſhale* were in ward to the earl, as ſo it muſt be taken, either by the king's grant or otherwiſe, why ſhould he pay eſcuage? If his land held in capite were to him by deſcent, how came the earl to the wardſhip? except by grant. Admit he had it by purchaſe, why ſhould the earl have the eſcuage? except by way of liberate from the king's bounty. Very many other eſcuages are there, as *Henricus* de *Tayden* *habet ſcutagium de feodo vi. militum ad opus filii ſui qui eſt in Pictavia*. *Robertus* de *Cardman* de l. x. & xiv. *feodis militum pro filio ſuo qui ſuit in Pictavia*. *Thomas Pannell* *habet auxilium l. librarum Taronenſium de libere tenentibus ſuis & aliis de inſula de Greſcey*. But, for the default of tenants not coming to the army, a place in the leiger book of *Abingdon*, in the hands of my noble and much deſerving friend, that beſt furniſhed antiquary *Sir Robert Cotton*, is worth obſervation. *Eſt juxta Abbedune burgum* (are the words) *unius militis manſio, quae Lea vocatur*. *Hanc Willielmus regis camerarius de Lundonia tenebat*. This *William* held it of the abbey, and by knight's ſervice. In 2 *Hen. I.* forces were levied to encounter *Robert* duke of *Normandy*, when *Farritius*, abbot of *Abingdon*, required of *William* his tenant to find him a man for the army, as his tenure bound him to do; but *William* denied it, whereby the abbot was driven by other means to ſupply the number of his part. The abbot afterward, *tandem* (as the book ſaith) *in praefentia ſapientum, hanc rem ventilari fecit, ut ille neutrum negaret, imo ſatcri ſe eſſe vera ratione cogeretur, unde cum lege patriae decretum proceſſiſſet ipſum exortem tercia merito deberi fieri, interpellatione bonorum qui intererant virorum, reddidit terram illam illi*; and ſo the tenant under fair conditions had his land again. This *Lea* is now called *Befles-Lee*, and is of the poſſeſſions of the *Fettiplaces*.

1b. Unde decem carucatae, &c.] This form alſo is diſſallowed by the regiſter; but, when it was in uſe, no particular quantity of the ſervice was expreſſed, becauſe the land by reference to a knight's fee ſhewed it's own ſervices. *Bracton* lib. 5. traſt. 1. cap. 2. *Ubi quantitas feodi exprimitur in quantitate terrae petita, non ponitur aliquod ſervitium, quia in quantitate feodi oſtenditur quantitas ſervitii*; it being all one in ſubſtance to ſay, that one holds *iii. carves*, whereof *viii.* make a knight's fee, and that he holds ſo many acres or carves *per ſervitium dimidii feodi militis*. Carves and hides are uncertain quantities, yet

by that name, division was antiently made in levying *bida* and *carucage*. See what is noted in *titles of honour*, pag. 270. & seq. and in *code Abingdoniae*, pag. 42. *Geoffredus de Ver Albrici filius* gives to the abbey some possessions *cum duarum bidarum duodecies xx. acrarum terra disjuncta*. & Hen. I. gives to Maurice bishop of London, *duas bidas de duodecim xx. acris*, so that there *ccxli. acres* is taken for a hide. In the monks ever with one consent almost, it is always a plough-land; and St. Dunstan in the year *deccc.lxiii.* gives *terrae partem septem aratorum, quod Anglice dicitur septem bidas*: It is in *cod. chart. arch. Cant.* Thus should *bida* and *carucata* be all one, for *carucata* speaks the plough, *charou* in French so signifying, as Littleton also notes. But by antienter authority, *caruca* is not a plough, but a *chariot*, or such like, as *caruca cum junctura legata, mulae quoque legatae*, which is found in *Jul. Paul. recept. sentent. lib. 3. tit. 6.* where the old interpreter hath *carpentum*, for *caruca*. In like sense is *caruca* in *Marial*, *Pliny*, and others. It seems when *bida* or *carucage* was granted, the commissioners for levying it, with aid of jurors, used in every shire to assess how much should be in certain reckoned for a hide or carve. As in *9 Rich. I.* when an aid of five shillings, of every carve in the land, was to be levied, *Qui electi fuerant & constituti ad hoc negotium regis faciendum, statuerunt per aestimationem legalium hominum, ad uniuscujusque carucae wainagium centum acras terrae*. Here *c.* acres were for that purpose a hide. See *Roger de Hoveden*, fol. 443. & 443. Neither is any difference betwixt *carucata* and *carucae wainagium*; for *wainagium* is *tutib*, as it is *Englished* in the antient *Englsh of magna charta*, or *gainage*, as it is called, *Westm. 1. cap. 17.* See *Bracton*, fol. 73. a. 4. Ed. II. tit. *avowry* 200. and especially *Lowe's case* in *rep. 9. fol. 123. b. & seq.*

[Pag. 8. *Seditione personae domini regis.*] *Bracton*, fol. 118. b. *Si aliquis egerit vel agi procuraverit ad seditionem domini regis vel exercitus sui, &c.* so *Glawvil. l. 1. cap. 2.*

[*lb. Vitae & membrorum.*] Judgment *de vie & de membre* is used for judgment of death, or punishment capital, in *Stat. Westm. 2. cap. 38.* 3 Ed. III. fol. 19. a. pl. 34. in 18 Ed. III. fol. 32. a. pl. 5. 13 Ed. III. tit. *utlarie* 49. and elsewhere often. But antiently also part of it is taken for judgment of *loss of life*, and part for *loss of member* only, as in *West. 1. cap. 15.* — *Pur le quel un ne doit perdre vie ne membre.* And *Bracton* speaking of punishments, lib. 3. tit. *de afflictionibus* cap. 6. saith, *Sunt quaedam quae adimunt vitam, vel membrum*, and the like hath he in *tratt. de corona* cap. 36. *Majora crimina aliquando ultimum inducunt supplicium, aliquando membrorum truncationem.* One flying to a sanctuary by the laws of *William I.* had *pais de vie & de membre*, as the words of it are in the book of *Crowland*. And *amisso membrorum* was a special punishment of rape before *Westm. 2.* as you see in *Bracton* lib. 3. *tratt. de corona* cap. 28. He that was con-

demned lost his eyes and his stones; but by *Glawvil*, before *Bracton*, it appears it was death, lib. 14. cap. 6. But, that the judgment *de vie & de membre* in *Westm. 2. cap. 38.* was only judgment to be hanged, and meant about that time, to be so, is plain by the book attributed to *Breton*, cap. 14. where the author hath reference to the statute of *Westm. 2.* made in 13 Ed. I. which observe also for another purpose. It is commonly affirmed, with one consent, that *John le Breton*, bishop of *Hereford*, under *Hen. III.* and Ed. I. wrote that book. But it is clear that this *John* the bishop was dead ten years before the stat. of *Westm. 2.* here cited; for he died in 3 Ed. I. which the story of *Florilegus* the monk of *Westminster* enough justifies; yet, that no scruple in that may remain, it is to be proved also by infallible record. In *rot. pat. 3 Ed. I. memb. 203.* the *cogne desire*, for choice of a new bishop there, relates *quod cum ecclesiae vestra Herefordensis pastoris solatio per mortem bonae memoriae Johannis naper Herefordensis episcopi sit destituta, alium vobis eligendi in episcopum, &c.* this was 23 *May*; and in *memb. 19.* of the same roll, the royal assent is given unto the choice of *Thomas de Cantilupo*, successor to *John le Breton* being dead. All this is most certain; and it is as certain, that, about that time, was a judge of this name; for in *rot. claus. 51 Hen. III. memb. 12.* *Mandatum est* *Richardo de Ewell & Hungoni de Turri emptori garderobae domini regis quod habere faciat dilectis & fidelibus suis Johanni le Breton & Henrico de Monteforti justitiariis suis robas suas integras, prout cacteris justitiariis domini regis invenire consuevit, quandovis steterit in officio domini regis*; and the *dors. rot. pat.* of that year hath most frequent mention of *John le Breton*, and *Henry de Bracton* for judges of special assizes. He is sometime called *Bretun*, then *Briton*, and also *Breton*, and *Florilegus* sub anno 1275. Obiit hoc anno *Johannes Breton episcopus Herefordensis, qui admodum peritus in iuribus Anglicanis, librum de eis conscripsit, qui vocatur le Breton.* That there was a judge of that name, and that about that time one of that name was bishop of *Hereford*, here appears plainly, and that a book of common law called *le Breton* was written, and by the bishop, if you believe the monk and the consent of late writers which speak of it. But what book ever the bishop wrote, it cannot be this we have now left under that name, unless you will allow that one dying in 3 Edw. I. could cite a statute of 13 Edward I. as our *Breton* doth in this of rape, or the statute of 6 Ed. I. of *cessavit* at *Glocester*, as he doth in his chapter de purchase conditional, or the statute of *Winchester* of 13 Edw. I. as he does touching highways, in his chapter de *plures tortis*. Some other author then, than the bishop of *Hereford*, must be sought for that volume. This, by the way. For judgment *de membre*, antiently it was in appeals of *maibens*; to this day the count is *felonice*, but nothing but damages are now recoverable, nor was the law otherwise

otherwise under *Ed. III.* as appears by 22. *assif. pl. 82. 41. assif. pl. 16.* and other books. But before that time, the party attainted lost *membré pur membré*, as it is said 18 *Ed. III. fol. 20. a. pl. 31.* with which agrees *Breton, cap. 25.* where is added, *Et la pleint soit faite de femme que avera tolle a home ses membres, en tel case percha le femme la une meun per judgment, come le membré dont el avera trespasse; and if a knight were struck by a ribaud per felonie sans desiert de chevalier, the ribaud (saith the book) was to lose his hand; and it appears in *Glanvill, lib. 14. cap. 1.* and *Bract. lib. 3. tract. de corona cap. 24.* that the trials of *maibem* were by duel or ordels, as of capital offences. See *infra, pag. 87.* where, if the husband had been by judgment, *demenbratus*, the wife lost her dower; and for particulars, see there more, and the notes. By king *Knout's* laws, *cap. 50.* adultery in the woman was punished by loss of nose and ears, to which, it seems, reference is in that of *William I.* his laws in the *ms. Ingulphus*, si femme est judgee a mort u a desaciun des membres si seit encointer, that justice should not be executed till he be delivered, which in judgment of death is law at this day. And in *Fleta, lib. 1. cap. 38.* for petit larcenies, or cutting of purses with nothing in them, the pillory and loss of ears was the punishment. See 10 *Hen. III. tit. corone 434.* And, in *Fleta, lib. 2. cap. 5.* of every common whore following the court, the marshal, at the first apprehension, was to exact 4 d. at the second, to bring her before the steward, who was to take her name and forbid her the court; at the third, *considerabitur quod amputetur ei trespatorium, & quod tondatur;* at the fourth, *amputentur ei superlabia, ne de caetero concupiscantur ad libidinem.* At this day, saving for striking in the presence of the king or his courts, no loss of member is in use by course of common law. Ancient and late examples are of punishment of such striking by loss of the right hand, in 22 *Ed. III. fol. 13. a. 19 Ed. III. tit. judgment 174. 39. assif. pl. 1. 33 Hen. IV. Br. tit. paine 16. Stamford fol. 38. a. & 2. & 3 Elizab. Dy. fol. 188. b.* By late statutes, for some offences the hand, or ears are to be cut off.*

Ib. Curiam regis majorem. He calls that *curia major* here, which hath consins of all capital offences; and in his following chapters the same name he uses for the court. whither by *pone*, a suit in a writ of right is to be removed, that is clearly the *common pleas*; and *Bracton fol. 105.* hath *loquela a comitatu transferri potest ad magnam curiam*, where often to him *magna curia* is the *common pleas* plainly; so doth he use the same title in *fol. 332. §. 14.* and often elsewhere. But it seems, that to *Hengham*, *major curia* is no singular name for any one court: But for any of those of the king's highest courts, which have that name in regard of all inferior, and the subiect which he speaketh of with it, may design what court he means; as here, that he means the *king's bench*, or *aula regia* (as *Bracton* calls it, *fol. 105. b. §. 2.*) ap-

pears by the crimes recited afterwards; when he talks of a *pone* to remove the suit of a writ of right into *major curia*, there it must be the *common pleas*. And it seems in *pag. 16.* he takes the name expressly, as well for the court of justices in *eire*, as for the *common pleas*. Note the words: *Quamvis essonium de malo lesli in majori curia domini regis, utpote ad bancum vel in itinere iusticiariorum jaci debeat tertio die, &c.*

Ib. Placita vero de furtis. How the law hath been since taken touching pleas of the crown to be *viscontiel*, is taught in *Stamford, lib. 1. cap. ult. & lib. 2. cap. 14.* No capital offence was, by this opinion, to be heard and determined in the county. For though he name *furta* here, it seems, he means not that *theft* which is capital, but as *furtum* is in the civil law, so he understands it; that is, only for wrongful taking away goods, as the word *roberie* is used in *Westm. 1. cap. 37.* And all other kind of felonious taking, our author comprehends before, in *roberia*; which in those times expressed also all felonious taking, or *furtum* in that sense, as it is now used; witness *Bracton* cited by *Stamford fol. 27. b.* Yet in *Glanvill, lib. 1. cap. 2. furtum* is excepted to the sheriffs court, as out of such offences, *quae ultimo puniuntur supplicio aut membrorum truncatione.* It is no doubt but *Hengham*, in writing this, had regard to *Glanvill*, as it may appear by the same words in both; so had *Bracton*, speaking of this matter, *lib. 3. tract. de corona, fol. 154. b. Ad vicecomitem pertinet hujusmodi placita in comitatu. Cognoscere quidem potest de medietis, plagis, verberibus, & consimilibus, nisi quaerens adjiciat de pace domini regis infrastra, vel feloniam apponat. Extunc n. se vicecomes non debet intrromittere, cum hoc tangat personam ipsius domini regis & coronam suam.* But, he says the coroners were to inroll appeals of capital offences, and present them in the *eire*. So that in those times, by *Bracton's* opinion, if one had sued criminally in the county, and concluded *contra pacem domini regis, &c.* the court had not jurisdiction; but if *contra pacem vicecomitis*, then it had, so is his difference there, and *pag. 145. b.* For in the one case, judgment *de vie ou de membré*, or imprisonment, was to follow, in the other, only *amerciament*, or *poena pecuniaria*, as he calls it. But see this author, *pag. 21.* where he speaks of appeals *sine brevi*. Appeals then might be taken or commenced, but not determined in the county, if they were *de pace regis fracta*, so it seems. See *stat. magna charta, cap. 17.* which belongs hither. Neither is it amiss to remember a judgment given in the time of *Hengham*, and before him in 30 *Ed. I.* not from the matter here spoken of. It is in *P. 30. Ed. I. ms. fol. 280. a.* where the sheriff of *Yorkshire* is commanded, *Que il seit venir le appel Jon de Morton ensamblement oue Jon de Thouthorp attache per son appel oue tote les choses meme le appel touchans devant justices en bank per breve de la chancelerie. Le quel recoyna son breve que il abeit maunde au meye* &

et a bailliffes de la ville de Everwike, &c. Les queux respondent que Jon de Morton appella Jon de Thouthorp que il ly assely a fault purprie le demaine prochain devant la seile de seint Nicholas en la ville de Everwike en Steyngate e illeike ly robba de un tabbard pris de trets sous e de duffe deniers d'argent contra la pces, &c. Demand fut au meye la maniere del attachement, e syl y lut meynoure, e par quen garrant us tenent teu maner de play, Il dist que Jon de Morton leva la mene lur Jon de Thouthorp, e troba pleges de suer son appel au cojoners de la ville par quer eus le attachement e le pissent e tinorent le play en lur gpid hale de cest appelle par usage de la eptie usce de tens d'ont il ne ad memoire a teuer sans breue e sans meynoure ou paltic, &c. Et quia secundum legem & consuetudinem regni, major & coronatores aliquis civitatis hujusmodi appella coram eis audire non possunt, & terminare, nisi eorum cognitio per cartam domini regis vel progenitorum ejus, vel per breve domini regis de hujusmodi appello coram eis audiendo & terminando specialiter sit concessa, cum ea ad dominum regem ratione juris sui regii & non ad alium, in regno regis, pertineant; Consideratum est quod appellum praedictum coram ipsis majori & coronatoribus habitum, tanquam coram eis qui nullum in hujusmodi casu habent jurisdictionem, adnulletur & pro nullo habeatur. Et quia praedicti major & coronatores nulla in curia hic manupus vel peltum profuerunt, nec idem Johannes de Morton solempniter vocatus appellum praedictum in curia hic profegit, visum est curiae quod ad sellam domini regis versus praedictum Johannem de Thouthorp in curia hic non est procedendum. Et ideo praedictus Johannes de Thouthorp inde sine die. Et ad iudicium de praedictis majore & coronatoribus qui appellum illud tenebant sine warranto. These are the words of my report very antiently written. I transcribed it all, because divers things are in it specially observable.

1b. *Medletis.*] *Glawvil* and *Bratton* have de *medletis*, for sudden affrays or distikes. The word is so used too in *regiam majest.* l. 1. cap. 3. and hence is our *chance medley*, corrupted from *chaud melle*, which signifies *hot*, or *sudden debate*; whence, in *Scotland*, *chaud melle* is opposed against *forethought felony*, as *manslaughter* with us against *murder*. See *Skene* ad *citat. loc.* & de *verb. signific.* But, *chance medley* is in *Stamford* otherwise. *Skene* interprets *chaud melle* by *rixa* in the civil law.

1b. *Hutesum.*] Although *clamor* and *butesum*, or *buesum*, is for *bue* and *cry* in our law, yet it seems here it is a word made from *butin*, i. e. *stolding*, *brazling*, *contention*, whereby the peace of the county was disturbed. For all the rest here spoken of are offences, amongst which you cannot well reckon *bue* and *cry*; although of that the sheriff had power to determine, if it grew in question betwixt the appellant and appellee, *utrum appellans butesum levaverit*. *Brat.* lib. 3. fol. 145. b. §. 2.

1b. *Ubi non agitur de pace domini regis* *fracta.*] He means, when the plaintiff or appellant

did not complain of the king's peace broken, but only of the peace of the sheriff; so *Bratton* teaches the law of that time, that if, for the like, suits were in inferior lords' courts, the conclusion was *contra pacem domini*; if in the court of a corporation, *contra pacem ballivorum*, if in the sheriff's, *contra pacem vicecomitis*. Neither means *Hengham* that those offences were not in themselves *contra pacem regis*, but that in the suit commenced in the sheriff's court, the king's peace broken might not be complained of; which well agrees with, and explains the law now, that without writ, the sheriff cannot hold plea *de transgressionibus contra pacem domini regis*, as it appears in *Fitzb. nat. br. fol. 47. A.*

[*Pag. 9. Hanc assisam.*] Supposing the mise be out on the grand assize.

1b. *falsat.*] That is, by oath prove that the lord's court hath failed him of right; the two following chapters have more of it, and see *Bratton*, lib. 5. fol. 329, & 330. where the *falsifying* (as it was called) of the lord's court, is by oath taken by the defendant, with two others, in the lord's court, or at his manor house; but *Hengham* allows it by the oath only of the party; this *Bratton* styles *defesta probata*. Touching this obsolete usage, a case of 11 Hen. II. is worth observation. It is related in *Roger de Hoveden*, cap. 283. when *Thomas Becket* desired the king, he might, with his leave, go visit pope *Alexander*, then commorant in *Fraunce*, the king answered him, *Tu prius respondebis mihi de injuria quam fecisti Johanni Maritchallo meo in curia tua. Conquestus n. erat regi idem Johannes quod, cum calumniatus esset in curia archiepiscopi terram quandam de illo tenendam jure haereditario, & diu inde placitasset, nullam inde potuit assequi justitiam, & quod ipse curiam archiepiscopi falsificaverit secundum consuetudinem regni, cui archiepiscopus respondit, nulla justitia defuit Johanni in curia mea, sed ipse (nescio cujus consilio au propriae voluntatis motu) attulit in curia mea quandam Copet, & juravit super illum, quod ipse pro defectu justitiae a curia mea recessit, & videbatur justitiae curiae meae, quod ipse injuriam mihi fecit, quia sic a curia mea recessit, cum statutum sit in regno vestro, Quod qui curiam alterius falsificare voluerit, oportet cum jurare super sacrosancta evangelia. Rex quidem, non respiciens ad verba haec, juravit, quod ipse haberet de eo justitiam & iudicium. Et barones curiae regis judicaverunt eum esse in misericordia regis, & quamvis archiepiscopus niteretur iudicium illud falsificare, tamen prece & consilio baronum posuit se in misericordia regis de D. libris & invenit ei fidejussores. That toper was a church book of the time, and it is what in a constitution of *Robert Winebelsea*, is called *toperium*, in *Lincol.* Province. *constit. tit. de eccles. aedific. c. ut parochiani*. Of this *falsifying*, more in *Breton*, fol. 275. according to *Bratton*; and the *serviens domini regis* in *Bratton*, appears to be *bailliff of the hundred*, or some such minister.*

[*Pag. 10. Vel per duos, &c.*] If you read &, then agrees he with *Bratton* and *Breton*.

Page 11. *Non debet attornatus aliquis.*] Examine it by Breton, cap. 126. fol. 286. a. stat. Merton, cap. 10. regist. orig. fol. 26. & 27. temp. Ed. I. tit. attorney 106.

Page 12. *Breve de pace.*] Mention is of this court, temp. Ed. I. tit. droit. 45. and precedents are of the writ in Glanvil, lib. 2. cap. 8. and Bracton, fol. 331. §. 5. See also Breton, fol. 277. b. & regist. orig. fol. 7. b.

Ib. Justitarius ad omnia placita.] Justices in eire; which were in some like nature to the now justices of assize, but had not their circuits so often. The beginning of them was in 22 Hen. II. which was by example after followed. See Hoveden, pag. 313. & 337. & Geruase, Tilburien, in dialogo de scaccario. But it seems great delay of justice might to have been. For the eires were not very frequent, and by some, the distance of them was seven years. So says Scrope, in temp. Ed. III. fol. 143. a. and see fol. 149. a. Aldenham. Glanvil speaks not of them in this case, it being not in use in the infancy of eires, to have the probibemus referred to them; succeeding time brought in that; and about Ed. III. the eires were left.

Ib. Ad corporale sacramentum ponere, &c.] Bracton, fol. 106. a. *Non potest aliquis baro, vicecomes vel alius de liberis tenementis cognoscere, nec tenens tenetur respondere sine praecepto vel warranto domini regis, nec possunt aliquem de hujusmodi ad sacramentum sine warranto compellere.* See stat. Marb. cap. 23. 44 Ed. III. fol. 19. b. & 39. Ed. III. fol. 35. b. Touching being compelled to oath without warrant of the king. See the case, T. 35 Ed. I. recited in titles of honour, pag. 263.

Page 14. * *Congerere.*] it may be, *contrabere* was the word of the author.

Page 16. *Non plus, quamvis.*] Read *non plus, quamvis, &c.*

Ib. Alibi videtur n.] Whatsoever *alibi* should be (some copies having *tales, some tales*) continue it with *videtur quod tal.* &c. the reason is plain.

Page 17. *Turrim London.*] Refer hither Bracton, fol. 345. & 359. a. and 3 Hen. III. tit. effoine 186. and the reason of day given at the Tower, see in Hengham, pag. 45.

Ib. Anno bisextilis.] The four excrecent quadrants of a day in the Julian year were, and are at the end of every four years space, put into one day, which added to the 365 of the common year, makes 366 for the leap, or *bisextile* year; the addition was not to the end of the year, but the day is so intercalated in February, that it falls to be joined with the six *calends* of March, which being every fourth year so made of two days joined, denominated their year with *bisextus*, because *eo anno bis diceretur sexto cal. Martias*. That ordinance of the leap year, after spoken of, is dated *apud Windesore, 10. die Mali anno regni nostri* 54. by Hen. III. in the old statutes. See for this matter, Bracton, fol. 344. b. and 359. b. In the Roman civil law, the like account was of the intercalated day, and it, with that where-with it was joined, was as one day. *Ulpian in .i. tit. de minoribus l. 3. denique §. 3. Proinde & si in bissexto natus est, siue priori siue poste-*

riore die, Celsus scripsit nihil referre. Nam id biduum pro uno die habetur, & posterior dies calendarum intercalatur.

Page 27. *Reddenti eston.*] More largely of that in Bracton, fol. 351. & 352.

Ib. Affidatis in manibus.] Read *affidati*. The affidavits here are taken in *manibus, vel super virgam clamatoris*. For that in *manibus* see Bracton, speaking of falsifying the lord's court, fol. 329. b. *Vadiata probatione defaltae in manum servientis domini regis.*

Page 28. *Duo dies per annum.*] But see stat. of *dies communes in banco*, and 8 Ed. IV. fol. 4. b. where that is affirmed for a good statute law.

Page 29. *lin. 18. vel comparat.*] Read *& comp.*

Page 33. *lin. 4. Delicto alterius. Ex, &c.*] Read *delicto alterius, ex, &c.* What he means by this, appears not clear enough. Of pleas determinable *per legem* now, none is, where-upon imprisonment should follow. In elder times indeed *ley gager* (if you take *legem* here for that) was a trial in many actions which now admit it not, as in *attachment* upon a *prohibition*, 24 Ed. III. fol. 39. a. and see 28 Ed. III. fol. 100. a. 18 Ed. III. fol. 4. a. 2 Ed. III. fol. 8. b. 48. Ed. III. fol. 6. a. and in *placit. assis. apud Northamp.* 31 Hen. III. coram Rogero de Thurkelby & focis suis rot. 11. in dorso. *Geruase de Bernake* brings a writ of *mesne* against *Peter de Bernake*, and the tenant confesses cause of acquittal, but says the demandant was not distrained through his default, which plea is tried by his law. And in a roll in the Tower indorsed circa 34 Hen. III. rot. 7. in a writ of *sine facto* by Matthew de Stratton against Ralph Mantanner about a common, in the count the defendant was charged with using the common otherwise than the fine would; he pleads he did not use it otherwise, *Et offert se defendere contra ipsum & scilam suam sicut curia consideraverit. Ideo consideratum est quod vadit ei legem se xii. mano, & veniat cum lege sua a die sancti Hillarii in xv. dies & plegii de lege Willielmus Brauthe & Willielmus filius Roberti. Postea a die Pasche in xii. septimanas venit praedictus Radulphus & fecit legem suam; idem consideratum est quod praedictus Radulphus inde sine die, & Mattheus in misericordia.* Thus differed were ancient times from the present. But what had this *ley gager* to do with imprisonment spoken of in this author? *Quaere.* Or doth he mean by *legem*, the arraignment on criminal offences, which being not capital, are punished by imprisonment? *Poni ad legem* is a usual phrase in old rolls, especially in that of 31 Hen. III. now cited, for one to be arraigned, or put to answer to criminal offences.

Page 34. *Non plevin.*] This is remedied by the stat. of 9 Ed. III. cap. 4.

Page 37. *Secundum Henricum de Bathonia.*] A justice of Hen. III's time, is obvious in the rolls of that name. But this point of *ley gager*, against the testimony of the summoners, is in Henry de Bracton, fol. 334. b. He cites him again pag. 38. 47. & 60.

Page 48. *Velint surgere.*] i. e. have *licentiam surgendi*, whereof more special matter is

in *Bracton* fol. 355. 3 *Henry III. tit. effoine* 186. 14 *Hen. III. effoin* 190. & vide *regist. orig. fol. 8 & 9*. He that was effoined *de malo leſti*, might not rise before his being seen by the four knights, which if he did, and were not found in his bed when they came to make their view, his effoin was turned into a default; of which also is a notable case of 16 *Rich. I.* in the book of *Crowland*, where *Henry de longo Campo*, abbot, though being in possession, yet sued the prior of *Spalding* for entering upon his marsh *contra pacem regiam*; the prior pleads he entered as into his own fee simple, and offers xl. marks for the grand assise, and the mise is joined so. The abbot is effoined *de malo leſti*. The writ goes out to the four knights to make the view; while one is coming to view him, he rises, and comes towards the court; the knight certified he could not find him in his bed; whereupon judgment was given after long consideration, *quod abbas Crowlandie, qui se effoinavit contra priorem de Spalding, de malo leſti apud Crowland, & illic non est inventus in leſto, quando viſus deberet de eo fieri, amitteret ad tempus seſuinam*. Note, seſuin was upon his default given to the defendant in the suit. The whole plea and story of it is long, but most worthy the reading, to instruct in the courts, courtes of that time, and specially in processess sent out by the lord chief justice of England, in his own name, sitting with the justices in *banco*. Divers whole writs from the king beyond sea, and from the chief justice at home, are in it, and the whole is very understandingly related.

Pag. 52. Ad horam nonam.] See 16 *Ed. II. tit. action ſar le caſe* 47. where so much of the day as is from nine of clock is taken for half a day. *Quaere*.

Pag. 58. Cepit homagium & ſervitium vocantis.] That homage and other services, was cause of warranty antiently, authorities are frequent, *temp. Edw. I. tit. garranty* 90. 47 *Hen. III. itin. Cornub. eod. tit.* 99. & *vouchet* 270. *temp. Ed. I. tit. age* 129. 13 *Ed. I. tit. per quae ſervicia* 23. *Breton cap. 70, & 68. Bract. lib. 4. trakt. de mort. antecessoris cap. 1. & de warrant. lib. 5. cap. 2. §. 4. fiat. de bigamis cap. 6.* and this author *cap. 13.* although now only homage auncestrel be cause of warranty.

1b Et hoc pro ſacramento ſuo.] See *Glawvil. lib. 2. cap. 3.* and *Westm. 1. cap. 11.*

Pag. 59. Ad warrantiam.] The Latin of that time is rather *ad warrantum*, and so afterward is it often printed, the copies being indifferent.

1b. Quod permittat.] But, in *Hen. III.* his time, voucher was allowed in a *quod permittat*, as appears 12 *Hen. III. itin. Norff. voucher* 281. & 33 *Ed. I. tit. voucher* 272.

Pag. 69. Duellum in omni eventu.] That is, *combat a tout oultrance, i. e. battle to the utmost*, according as the law requires; so *pag. 12. ſupra*, he hath *proſequi in omni eventu*, to follow the suit to the utmost. Is not *sout atrenche* in the defences corrupted from *tout oultrance*? See *nov. narrat. fol. 3. a. 2 Ed. III. fol. 64. a. Baſſet*.

Pag. 71. Cartam de ſcoffamento.] Of the ancestor of the infant, whose heir he is. For otherwise the tenant fails in the voucher of an infant. See *Bracton lib. 5. trakt. de warrantia cap. 2. §. 2. 43 Ed. III. fol. 3. &c.*

1b. Minor non habet legem.] For, in the warranting the effoin, oath is to be taken. See *Bracton fol. 337, & 338.* and *Breton cap. 125. fol. 284. b. Habere legem*, is here to be able to take a legal oath, and *sacere legem* (as at this day) to take it. See in the notes to *Fortescue, of legem terras*. By *Bracton* also *fol. 340. b.* an infant cannot have these effoins, *quia jurare non poſſet nec eſoniam warrantizare*. See 38 *Ed. III. fol. 8. b. 32 Ed. III. tit. per quae ſervicia* 9. 26 *Ed. III. fol. 63, & 64.*

Pag. 72. Tenetur donator & ejus haeredes.] So must you read. So was the law in seoffments before the statute of *Quia emptores, &c.* when a tenure was reserved to the seoffors. See *ſtat. de bigamis cap. 6. 13 Ed. I. apud West. tit. garranty* 92. & 13 *Ed. I. tit. voucher* 290.

Pag. 73. Reſiduas duas C. vel D.] It is supposed by this, that the other land, of which the seoffor is seised at the seoffment, might be bound by the warranty comprehended in the deed. So also was the law taken in 16 *Hen. III.* in the case of *Alice de Ware*, reported by *Bracton, fol. 381. a.* being (it seems) the same with 17 *Hen. III. tit. recovery en value* 25. And see 32 *Ed. I. tit. voucher* 292. But it is plain now, no land is bound but what the seoffor or his heir, hath at the time of the voucher, or warranty of chartres brought.

Pag. 79. Tempore regis Henrici.] But that in the margin (as some copies are) agrees with the law of *Westm. 1. cap. 39.* wherein, the writ of right was limited to *Richard I.* his time, which limitation continued till 32 *Hen. VIII. cap. 2.*

Pag. 83. In quo non jacet duellum, &c.] See 18 *Hen. III. tit. droit* 62, & 13 *Ed. I. eod. tit. 51. ſtat. de mag. aſſiſ. eligenda, & Hengham pag. 115.*

Pag. 85. Si non excedit tertiam.] For, by the antient opinions, only a third part might be assigned *ad oſtium eccleſiae*, so *Glawvil. lib. 6. cap. 1. Bracton lib. 2. de acq. rer. dom. cap. 39. & trakt. de all. dotis. fol. 315. a. Breton cap. 113.* But see 9 *Hen. III. tit. dower* 190. & *Fitzh. nat. br. fol. 150. P.*

Pag. 87. Inſaliſtatuſ.] It appears, that several customs of places, made in those days, capital punishments several. But what is *inſaliſtatuſ*? In regard it is of a custom used in a port town, I suppose it was made out of the French word *ſalaize*, which is, *ſine ſand by the water ſide*; or, *a bank of the ſea*; in this sand, or bank, it seems their execution, at *Dover* was. In this place, the copies vary, no one having all the punishments, but for the rarity of the remembrance, I took out of divers copies all these. The old English translation here helped not.

1b. Vel apud Winton demerbratuſ.] That is, of his eyes and stones, for such was antiently the punishment of felons in *Wincheſter*; as also in *Wallingford*. One authority justifies both; in 45 *Hen. III. Berk. coram Gilberto de Preſton* & so-

Et sociis suis in oñ. purif. b. *Mariae rot.* 29. the jurors of the borough of *Wallingford* give in, *Quod nullus de natione istius burgi pro quocunque facto quod fecerit, debet suspendi, imo secundum consuetudinem istius burgi debet oculis & testiculis privari, Et tali libertate usi sunt a tempore quo non extat memoria*; and so they there say one *Benedict Hervey* was lately so punished. *Et, quacsti juratores, si tali libertate usi sunt; dicunt quod a tempore Henrici avi domini regis nunc usi fuerunt eadem libertate per cartam ejusdem d. regis quam eis fecit, per quam eis concessit omnes libertates quas civitas Winton habet, &c.* They challenged this liberty from a charter of *Hen. II.* who gave them all such liberties as *Winchester* had.

[*Id. Decapitatus.*] See *regist. orig. fol. 165. a. & Fitzb. nat. br. fol. 144 H.* of beheading for felony.

[*Id. Ubi quis movet guerram, &c.*] See 8 *Ed. III. fol. 388. a. 7 Hen. IV. fol. 32. b. & 47. a. 15 Ed. III. tit. petition 2. Plowd. com. fol. 263. a.* the *fadlers case* in *rep. 4. fol. 57. b. Stamford fol. 189. and Perk §. 391.*

[*Id. Item si minor, &c.*] By this and what *Glanvill* hath, *lib. 7. c. 12.* it appears that in those times, greater prejudice was often to the heirs of both sexes, by marriage without their lord's consent, than the law since burdens them with.

[*Id. Dotem deservire.*] That is, *demereri*. By such uncertainty, without limitation of years, those old authors judged of a woman's dower; so *Bracton. l. 2. c. 39. Breton c. 109.* And by the *Roman* law, *non potest videri nupta quae virum pati non potest*; inasmuch that if a legacy be given to a young girl, to be paid quando nupserit, it she take a husband before she be *viripotens*, the legacy is not yet due, by exprels text in *x. tit. quando dies legat. vel fidei commissi. cedat l. 30. quod pupilla.* So in the *reg. majest. of Scotland lib. 2. cap. 17. a.* a woman loses her dower, *si sit ita juvenis, quod non potest habere rem, hoc est, coire cum viro suo.* But in our year books, divers cases are of later time touching a certainty of years, and now it is taken usually (as *Littleton* says) she must be above nine. Besides the common authorities, see *Fleta lib. 5. cap. 22.* and for the two cases of this matter, in *7 Ed. II. tit. dower 147. and 12 Edw. II. tit. eod. 159.* they are worth more observation in the report at large, which is extant in our *Inner Temple* library; The first is between *Symond and Benster fol. 107. a.* the second is *fol. 163. b.* where *Berry* says expressly, that it lies in the discretion of the judges, whether the deserve dower or no.

[*Id. Requiritur longa seisin a pacifica.*] For in those times, the law was taken, both that long seisin so added a title to a disseisin, that the disseisee might not enter; and also, by some, that short seisin of one that had right to enter, gave him not so much freehold that he might have his assise against a disseisor; so it appears in *12 Hen. III. tit. Staff. tit. assize, 428. & 429. 30 Edw. I. tit. Cornub. tit. attainr, 76. Bracton fol. 160. & 161. Hengham pag. 98.* But see *Breton. chap. 42.* to which (that we may observe the opinions of that time) add a case, ad-

judged before our author, upon this point of *longa* or *brevis seisin*, and reversed in the king's bench. In 33 *Ed. I. mf. fol. 59. b. John le fixz Aveline*, brought a *mort d'ancestor* before Sir *Ralph de Hengham* and his companions, of the death of *John le Clark*, his uncle, against *Edmund of London*, garden of the house of *St. Thomas of Acres*; the tenant pleads *puis darrain seisin* in *Aveline* mother to the demandant, who was seised after the death of the uncle. Issue upon this is joined, and the assise taken; they find, *Que apres la mort meisme celuy Jon le Clerk meime celly Aveline tant come le corps fust en la bere entra & seins fust reclamant come heir Jon & per un demp hour dejour pbenura, tanque fust empoxer ou corps, ou ele se volent estre l'eins tenus, tuent le dit Emon & la oña*; (so are the words in my copy, very antiently written;) and to Sir *Ralph* and his companions, says the book, it seemed that *cele petite seisin* *En ten temps ne fust nul*, and so they adjudged that the demandant should recover. But by writ of error, and upon the very point, that judgment was reversed, *quia sola*, as the report is, *pedis positio vero haereditis seisinam contulit*, *epargard la court que Edmond trest la seisin, &c. & ses dammages, & est Jon son rescouviee per autre voie sil voile.* And this reversal agrees well with what our author hath in the beginning of this chapter. See 3 *Ed. III. in vet. nat. br. fol. 126. b. in dum fuit infra aetatem.* But now it is plain law, that the least time is enough for seisin to him that hath right to enter, as in 8. *assif. pl. 25. 26. assif. pl. 42.* and elicewhere. The true meaning of *transfertur liberum tenementum in feoffatum* &c. in *stat. Westm. 2. cap. 29.* may be had out of this old opinion; see *infra*, pag. 99.

[*Pag 103 Extra astrum*] All this passage, in the same words, is in *Fleta, lib. 4. cap. 2.* whereby, *astrum* must be taken for the lord's dwelling-house, or such like. See the customs of *Kent*; in partition, there, *le assise demora al punci, &c.* pag. 574. The elder times had also *homo astrarius* for a *housholder*, as I guess, or in such like signification. *Bracton, lib. 2. cap. 36. §. 7.* speaking of payment of reliefs; *Esso quod haeres sit astrarius, vel quod aliquis antecessor resistat haeredi in vita sua haereditatem & se dimiserit, videtur quod nullo tempore jacebit haereditas*; as if he had said, *Suppose the heir be housholder, or as tenant to the lord in life of his ancestor, &c.* and in *Fleta, lib. 1. cap. 47.* *Erithborgh, est laudabilis homo astrarius*; and extra *astrum* in them, is to *Bracton, extra potestatem dominorum, fol. 165, & 166.*

[*Pag. 104. Sokemannus.*] This also is in *Fleta, lib. 4. cap. 2.* and agrees with that which is called *tracatus de antiquo dominio*; and in a very old *English* translation of the statutes is titled a statute, being indeed only some lawyer's answer or in the nature of civilians *confutatio*, (or such like) to questions proposed touching *avuncien demesne*. But the law in the year books is clear, that to any real actions or favouring of the realty, *avuncien demesne* is a good plea. See *Bracton, fol. 273. & Breton, cap. 66. de gardes.*

S P E E C H E S

A N D

A R G U M E N T S.

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I I T

S P E E C H E S

S P E E C H E S

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*In the impeachment against the duke of Buckingham, 1626, May 8.
upon the fourth and fifth articles, Selden said,*

THAT by nature of his office, the duke, as admiral, ought to have guarded the seas; By his patent he is made *magnus admirallus Angliae, Hyberniae, & Walliae, Normaniae, Aquitaniae, villae Caesarii & marchiarum ejusdem, & praefectus generalis classium marium dictorum regnorum*. The seas of *England* and *Ireland* are committed to the admiral, as a part of the demesne and possessions of the crown of *England*; not as if he should thereby have jurisdiction only, as in case of the admirals in *France* or *Spain*. The state of *Genoa*, *Catalonia*, and other maritime parts of *Spain*, the sea towns of *Almain*, *Zealand*, *Holland*, *Friezland*, *Denmark*, *Norway*, and divers other parts of the empire, shew, that the kings of *England*, by reason that their said realm hath used, time out of mind, to be in peaceable possession, are lords of the seas of *England*, and of the islands belonging to them. And although *Grotius*, that *Hollander*, wrote of purpose to destroy all dominion in the east ocean, yet he speaks nothing against the dominion of our *English* seas, howsoever he hath been misapprehended, but expressly elsewhere saith, *Meta Britannicis litora sunt oris*; the utmost limits of the demesne of the crown of *England*, are the shores of the neighbouring countries, the whole sea, or the *territorium maximum* that intervenes, being parcel of the possession of the crown; the keeping and safeguard of these committed to the lord admiral by the name of the *praefectus marium* & *admirallus*, being but the same antiently. Before the use of the word *admiral* came in, which was under *Ed. I.* the admirals had the titles of *custodes maris*.

And this *praefectura*, or *custodia*, or office of safe-guarding the seas, binds him to all care and perpetual observance of whatsoever con-

duceth to that safeguard, as in *custos sigilli, custos marchiarum, custos portuum, & custos comitatum*, agreeable to the practice of former times.

1. In certifying yearly to the king, and his council, the many forces both of the king's ships, and ships of merchants, the names of the owners, the number of mariners, &c. that the king and his council may always know his forces by sea.

2. In shewing wants of ships, &c. for the safe-guarding of the seas, with the estimates of the supply, that so they might be procured. In personal attendance upon the service of guarding the seas upon all occasions of weight. In *7 Hen. IV.* *Nicholas Blackborne* and *Richard Cliderowe*, one of the knights of *Kent*, were made admiral for keeping the seas, upon consideration had of it in parliament, and the other knight being *Robert Clifford*, it was agreed in parliament, that he should have the voices of both, because the other must of necessity be absent; and they both, amongst other things, petitioned the council, that if the king in his person should come on the sea, they might have such a liberty to wait upon him, as they might make their lieutenant during the time for the service of their places; but the council that allowed the rest, or most of their demands, answered to that, *Le conseil ne peut faire*.

Then he estimated the nature of the offence by the consequences which follow the not guarding of the seas, *viz.* 1. The losses already shewed. 2. The prevention of trade, which gives life to the wealth of the kingdom. 3. The weakening of the naval strength, the merchants being thereby discouraged from building ships which they cannot use. In *1 Rich. II.* the commons opened the two chief and almost whole causes of the weakening the kingdom at that time;

of the prison, whether before the return or after; for it appears not when the king's command was for the commitment, or the signification of the council came to him: It is true, that it appears that the warrant was dated the seventh of November; but when it came to the keeper of the prison, that appears not at all; and therefore as for want of mentioning the same time of the caption, so for not expressing the same time when this warrant came; I think the return is faulty in form and void.

And for apparent contradiction also, the return is insufficient; for in that part of the return which is before the warrant, it is said, *quod detentus est per speciale mandatum domini regis*, the warrant of the lords of the council; the very syllables of that warrant are, that the lords of the council do will and require him still to detain him, which is contrary to the first part of the return.

Besides, my lord, the lords themselves say in another place and passage of the warrant, that the king commanded them to commit him, and so it is their commitment. So that upon the whole matter, there appears to be a clear contradiction in the return; and there being a contradiction in the return, it is void.

Now, my lord, I will speak a word or two to the matter of the return, and that is touching the imprisonment, *per speciale mandatum domini regis*, by the lords of the council, without any cause expressed; And admitting of any or either of both of these to be the return, I think that by the constant and settled laws of this kingdom, without which we have nothing, no man can be justly imprisoned by either of them, without a cause of the commitment expressed in the return. My lord, in both the last arguments, the statutes have been mentioned and fully expressed, yet I will add a little to that which hath been said.

The statute of *magna charta*, cap. 29. That statute if it were fully executed, as it ought to be, every man would enjoy his liberty better than he doth.

The law saith expressly; No freeman shall be imprisoned without due process of the law; Out of the very body of this act of parliament, besides, the explanation of other statutes, it appears, *nullus liber homo capiatur vel imprisonatur nisi per legem terrae*. My lord, I know these words *legem terrae*, do leave the question where it was, if the interpretation of the statute were not. But I think, under your lordship's favour, there it must be intended by due course of law to be, either by presentment or by indictment.

My lords, if the meaning of these words *per legem terrae*, were but as we use to say, according to the laws, which leaves the matter very uncertain; and *per speciale mandatum*, &c. be within the meaning of these words, according to the law, then this act had done nothing. The act is, no freeman shall be imprisoned but by the law of the land; if you will understand these words, *per legem terrae*, in the first sense, this statute shall extend to villeins, as

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well as to freemen; for if I imprison another man, villein, the villein may have an action of false imprisonment. But the lords and the king (for then they both had villeins) might imprison them, and the villein could have no remedy; But these words in the statute *per legem terrae*, were to the freeman, which ought not to be imprisoned, but by due process of law; and unless the interpretation shall be this, the freeman shall have no privilege above the villen.

So that I conceive, my lord, these words *per legem terrae*, must be here so interpreted as in 42. *Eliz.* The bill is worth the oberving; it reciteth, that divers persons without any writ, or presentment, were cast into prison, &c. That it might be enacted, that it should not be so done hereafter; The answer there is, that this is an article of the great charter, this should be granted. So that it seems the statute is not taken to be an explanation of that of *magna charta*, but the very words of the statute of *magna charta*.

I will conclude with a little observation upon these words, *ne super eum mittetur*, which words of themselves, signify not so much; a man cannot find any fit sense for them.

But, my lord, in the seventh year of king John, there was a great charter, by which this statute in the 9th of Henry III. whereby we are now regulated, was framed; and there the words are, *ne cum in carcerem mittetur*, we will not commit him to prison; that is, the king himself will not; and to justify this, there is a story of that time in *Matthew Paris*, and in that book, this charter of king John is set down at large, which book is very authentic, and there it is entered; and in the 9th of Henry III. he saith, that the statute was renewed in the same words with the charter of king John; and, my lord, he might know it better than others, for he was the king's chronologer in those times. And, therefore my lord, since there be so many reasons, and so many precedents, and so many statutes, which declare that no freeman whatsoever ought to be imprisoned, but according to the laws of the land; and that the liberty of the subject, is the highest inheritance that he hath; my humble request is, that according to the ancient laws and privileges of this realm, this gentleman, my client, may be bailed.

An argument concerning the Habeas Corpus,
5 Car. I.

UPON the writ of *habeas corpus*, *ad subjiciendum* & *recipiendum*, directed out of the King's bench to the lieutenant of the Tower, he returns, that the prisoner was first committed to his custody by a warrant of the lords of the privy council, dated 4th Martii 5th Caroli regis, and recites the warrant wherein the king's pleasure for the commitment is also signified. And farther, he returns, that the prisoner is detained by him, by virtue of another warrant, afterward directed to him, under the king's own hand, dated the 7th of May following; wherein it is signified, that he was to take knowledge, that the commitment was for

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notable contempts committed against our self and our government, and for stirring up of sedition against us, with a command to detain him until his majesty's pleasure were farther known, &c. And so certifies the court, that these are the causes of taking and detaining him, and brings in his body according to the writ. And, whether upon this return, the prisoner ought to be delivered by the court, upon sufficient bail; or, remanded to the Tower, is the question? That is, supposing the return to be every way true (as in all cases it must be supposed, when the question arises upon a return) whether there be sufficient cause expressed in it, for which the prisoner ought to be remanded? Or, that the cause of the commitment be such (as it is expressed in the return) that he ought to be bailed? If there were no more in the case, but the lords, or the king's command, only; without farther cause shewed of the commitment; then it were clear, by the declaration of both houses of parliament, and the answer of his majesty to that declaration, in the late *petition of right*; that the prisoner were to be remanded. And the objections that some have made, out of the statute of *Westminster*, the first, cap. 15. That persons committed by command of the king, are not *replevisable*, and out of *Stansford*, fol. 73. as if he interpreted *bailable* (which indeed he doth not, if he be observed) to be understood in that statute by *replevisable*, and the like, are directly against the very body of the *petition of right*, and were so fully cleared in the debates, out of which the *petition of right* was framed, that to dispute them again, were but to question what the whole parliament had already resolved on, as the certain and established law of the kingdom. Nor is it timely to dispute here again the general power of commitment, by the lords or by the king himself. There is a commitment, in the case, and there is a cause shewed of that commitment, and of the detainer in prison; and the quality of that cause only is truly the sole question; to the stating of which, the nature and course of bails upon offences, either returned generally upon *habeas corpus*, or appearing more specially upon indictments, is shortly to be first opened. All offences, by the laws of the realm, being of two kinds: The first, punishable by loss of life or limb; the second, by fine, or some pecuniary mulct, or damage and imprisonment, or by one of them; and those of the first kind being treason, murder, felonies of less nature, and some more; and of the second kind, bloodsheds, affrays, and other trespasses. If any prisoner stand committed (though before conviction) for treason or murder; the judges, for ought appears in the books, have not often used to let him to bail, unless it have appeared to them, that there hath been either want of prosecution, or of evidence to proceed, or that the proceeding through disability of the appellants (in case of appeals) as when he is excommunicate, is de-

layed; or that the evidence is slight, or some such like cause. So that in the bailing upon such offences of the highest nature, a kind of discretion, rather than a constant law hath been exercised, when it stands wholly indifferent in the eye of the court, whether the prisoner be guilty or not^a. And according to that, they often let to bail, detain in prison, or remand the prisoner. Also in felonies of less nature; which being all, as those of the greatest nature capital, and so the punishment of the same above imprisonment, the imprisonment of the offenders without bail, is only used *ad salutem custodiam*, and cannot be used *ad paenam*. But if a prisoner before conviction, or somewhat that supplies a conviction, (so therefore also fit enough before conviction) stand committed for trespasses only, as all offences of the second kind are, and are punishable only by fine and imprisonment, or by one of them (in which case imprisonment is to be the highest part of his punishment, after conviction) there, by the constant course (unless some special act of parliament be to the contrary in some particular case) upon offer of good bail to the court, he is to be bailed; which agrees also with all justice and exactness of reason, that so both the court may, by his sureties and bail (to whose care he is a new committed) be assured to have him ready at the day given him upon the bail, to answer all proceeding against him; and he himself, having sureties that so undertake for his appearance, may not be compelled, before conviction, to endure that continually, *ad custodiam* only, which is the highest part of what he is to suffer, after conviction, *ad paenam*. So that in cases of imprisonment for offences of the first kind, divers circumstances might be, for which sufficient bail offered, might according to the use, be refused by the court. But in cases of imprisonment for offences of the second kind, sufficient bail, offered before conviction, ought of common right, to be accepted; saving still, where a special act of parliament alters the law in some particular case; but there is no colour or pretence of any such act, concerning the case in question; so that we are to examine it, (for the point of bailing,) only at the common law.

The state then of the question is but this. Whether that expression, *for notable contempts against our self, and our government, and for stirring up of sedition against us*, do denote any offence of the first kind? Which, if it do not, or so do not, as that the court may by the words of it be sufficiently informed that it is some offence, at least, of the first kind; the bail, in this case, ought to be accepted. The offences in the return, being two; first, *notable contempts*, and then *stirring up of sedition*, and both *against the king*.

There can be no question made of it, but that all *contempts*, of what kind soever, that are punishable by the laws of the realm, are *against the king and his government*, immediate-

^a Vide 2. affic. pl. 3. 3. affic. pl. 12. 48. affic. pl. 40. 26. affic. pl. 47. 41. affic. pl. 14. 23. Edw. IV. fol. 24. & 73. Brook. tit. malispride 60. & 63. 2. Eliz. Dyer, fol. 179. a.

ly or mediately. And although the latitude of them be such, as that some may vastly exceed others; Yet they are all, as *contempts*, only trespasses, &c. punishable only by fine or imprisonment, or by both, but not until conviction of the parties (as neither are other like offences) unless the contempt be in the face of some court, against which it is committed, which supplies a conviction. Now in this case, the contempts are only expressed in a generality, and no conviction appears of them. So that for that part of the return, there can be no colour why the bail ought not to be accepted. But all the doubt of the case depends upon the second offence; that is, *the stirring up of sedition against the king*. Which if it be an offence only of the same kind as *contempts* are, or a meer trespass only to the king, or, if by the words of the return, it appears not to the court to be an offence of the first kind, that is, either treason, or felony at least, (there being no conviction in the case) the prisoner ought to be bailed. For, unless the court be assured, out of the words of the return, that the prisoner stands committed for some such cause, for which he might not, of right, demand his bail; it is clear they ought to bail him. It rests therefore to examine the nature of the offence comprehended in those words, *stirring up sedition against us*. If it be any thing above what is trespass only, plainly it must be either treason or felony. For felony, no man pretends that by those words, any kind of felony is to be understood. The question then must be, whether the *stirring up sedition against the king*, be treason or no? that is, high treason, as all treason is that toucheth the king, as treason. For petit-treason, by the common law, is felony, in regard of the king, and treason only with respect to the persons slain, against the faith and obedience due from the offender; and therefore the indictments of it lay, *felonie & proditorie*.

In the consideration of the question thus stated, first, the use of the word *sedition*, and the sense of it in our language, and in our laws, that received it out of that language, is to be examined; and then, what those words, *against us*, import. Out of both which, it will be easily concluded, that the offence, as it is expressed in the return, although it be a great one, yet is only a trespass, and punishable by fine only or imprisonment, or both of them. For *sedition*, and the general notion of it; we have not either in the division, or explication of offences that occur in our books, an express definition, description, or declaration of it, though it occurs sometimes, as mingled with some other offences, and the adjective of it oftener than the substantive: Nor hath there been yet found any indictment or proceeding upon the crime of *sedition*, by that name singly, as an offence in law, clearly enough known by itself. *Unlawful assemblies, routs, riots, commotions*, are the nearest, if not the very things that, by other names do, for the most part, express what *sedition* is in our laws. *Vid. 3 Hen. VII. fol. 1. & Brook. riots 4 & 5.*

But our language, rather than our laws, hath received the word from *Latin*, and thence hath in preambles of statutes, and of indictments, sometimes inserted it; So that missing an express exposition of the word in our law, we have reason to seek for it first in the language whence we received it, and then in the use of it in our own.

In *Latin*, that which is mutiny, raising of tumult, assembling of any armed power, or conventicles, or the like, is *sedition*. Whence it is, that in the civil law, *seditio & tumultus* are frequently joined; and *conitatores seditionis*, and *aliores seditionis*, occur in the text of that law, ^b for such as stir up *sedition*. And thence also *seditio militaris* is used for a mutiny of the soldiers in the army, in *Tacitus* and others, and that for no more than the protesting themselves against any command whatsoever given by the general. In this sense it is used also by a lawyer of *Ephesus*, in the holy text, where *Demetrius* the silver-smith assembled the rest of his company against *St. Paul*, for preaching against *Diana*. For we are (saith he, speaking to appeale the assembly) *even in jeopardy to be accused of this day's sedition, for as much as there is no cause whereby we may give a reason of this concourse of people*. Acts xix. 40. In the same sense *Tertullus*, an orator and lawyer, pleading against *St. Paul* at *Caesarea*, before *Felix* the governor there, *We have found this man a mover of sedition amongst all the Jews throughout the world, and a chief maintainer of the sect of the Nazarens*, Acts xxiv. 5. And such like testimonies are very obvious. In the self same sense the word was received into our language, as we may see in that act of parliament against the *Lollards*, under *Henry IV.* 2 Hen. IV. c. 15. The words there are, *That they taught openly and privily divers new doctrines, contrary to the faith and determinations of the holy church, and of such sect and wicked doctrine and opinions they make unlawful conventicles and confederacies, they hold and exercise schools, they make and write books, they do wickedly instruct and inform people*. Et ad *seditionem* seu insurrectionem excitant quantum possunt, & magnas dissensiones & divisiones in populo faciunt. *Ror. parl.* 2 H. IV. n. 48. And, as much as they may, incite and stir them to sedition and insurrection, and maketh great strife and division among the people, &c. And about the beginning of queen *Mary*, an act of parliament was made against *seditions words and rumours*; in the preamble whereof, *seditions and slanderous news* is mentioned, and *seditions and slanderous writings*, and persons intending and practising to move and stir *seditions*, (so it is in *Rassall*, and the roll of parliament, not *seditions*, as in the statutes at large) *discord, dissension, and rebellion within this realm*. 1 & 2 Phil. & Mar. 3. And to the same purpose, an act of explanation of the said act of queen *Mary*, was made in the beginning of queen *Elizabeth* 1 Eliz. cap. 6. wherein mention also is of *false, seditions, and*

^b ff. ad l. Juliani majestatis, lib. 1. & tit. ad leg. Jul. de vi publ. l. 3. &c. C. tit. de seditionis, l. 1. & 2.

flanderous news, or tales, against the queen. As also in her 13 year, *cap. 1.* a provision is made against *contentious and seditious spreading abroad of titles to the succession of the crown*. And in another act of the same year, *c. 2.* also the bringing bulls from *Rome*, to raise and stir *sedition*, is mentioned in the preamble. And in the 23^d year another act 23 *Eliz. cap. 2.* was made with this title, *Against seditious words and rumours uttered against the queen's most excellent majesty*. And in indictments upon that statute of the 1st and 2d of *Philip and Mary*, as it was continued in the act of the 23d of queen *Elizabeth*; the party indicted for slanderous words, in defamation of the queen, is said to have been *machinans & intendens seditionem & rebellionem infra hoc regnum Anglie movere & suscitare*, and that *advise, & cum malitiosa intentione, contra dictam dominam reginam, & felonice ut sedit domine regine nunc, devisavit & scripsit quasdam falsas seditiosas, & scandalosas materias*, &c. 34 *Eliz. Coke, lib. intrat. tit. indictment, fol. 352. col. 3. & 353* where the title is misreferred to the act of 1 *Eliz. cap. 2.*

In the lord *Cromwell's* case also, 20 *Eliz. Coke 4. in añ. de scandalis, seditio* is mentioned against the queen's proceedings; and *seditio domini regis, vel exercitus sui*, in *Bratton*, fol. 118. and *seditio regni, vel exercitus*, in *Glanville*, l. 14. c. 1. and *seditio personae domini regis vel exercitus*, in *Hengham*, c. 2.

Now, for the sense of the words *sedition* and *seditious*, it will be most plain, that in all these places, (except those old books of *Bratton*, *Glanville*, and *Hengham*, the interpretation of whom hath fittest place after the examination of the objections made to prove *sedition* to be *treason*) they denoted in our language, and in the use of our laws, that received them thence, such an offence as was not punishable (without some special provision by act of parliament) otherwise than by fine and imprisonment, at the utmost; and were reputed singly, but as words or names designing *tumults, unlawful assemblies, routs, factions or rebellions* against any part of the established laws, or publick commands. Therefore in that act of 2 *Hen. IV.* concerning the *Lollards*, the punishment of them that offended against the act, and were *such stirrers of sedition and insurrection*, was, that they should be imprisoned only by virtue of that act, until purgation, if they purged themselves; and imprisoned and fined after conviction, and detained in prison till abjuration; and upon refusal to abjure, or upon relapse, to be burnt for heretics: But that act is repealed by the 25 *Hen. VIII. cap. 14.* So, by the act of the 1st and 2d of *Philip and Mary*, the first offence of *speaking seditious and slanderous words*, or rumours of the king or queen, was, after conviction, standing on the pillory, and loss of ears, (unless he redeemed them by the fine of 100 *l.*) and three months imprisonment. And if any, from another's report, shall speak any seditious and slanderous news of the king and queen, he should, after conviction,

lose one ear (or redeem it by 100 marks) and have one month's imprisonment: And that if any should maliciously devise, or write any book or writing, containing any false matter, clause or sentence, of slander, reproach, and dishonour of the king or queen, to alienate the minds of the subjects from their dutiful obedience, or to the encouraging, stirring, or moving of any insurrection or rebellion within this realm; or, if any procure any such thing to be done (the said offence being not punishable by the statute of 25 of *Edw. III. of treason*) he should lose his right hand. And that the second offence of them that were punishable by loss of ear, or ears, should be imprisonment during life, and loss of all their goods and chattels. This act of queen *Mary* expired at her death, and agreeable to it was that provision of the act of 1 *Eliz. c. 6.* which extended the same to queen *Elizabeth*, during her life; but there is no such law at this day in being. So, in that of the 13 of *Eliz. cap. 1.* the first offence of *contentious and seditious spreading abroad of titles to the succession of the crown*, is punished by the imprisonment of one whole year, and the loss of half the offender's goods, and the second offence by the pains of a *praemunire*. The bringing in of bulls also from *Rome*, to alienate the minds of the subjects from their dutiful obedience, and to raise and stir *sedition and rebellion*, is made high treason by that other act of the same year. By which it appears, that *stirring to sedition* alone is in that very act clearly supposed of far less nature. But that act is also expired. In that also of the 23 of *Eliz. cap. 2.* the reporters of *seditious news, or rumours*, against the queen, was made loss of ears (as before) or, that to be redeemed at 200 *l.* besides imprisonment of six months: and the reporters from another's mouth, to be punished according to that of 1 and 2 of *Philip and Mary*; saving, that the imprisonment, by this act, is three months, and the second offence is made felony, and writing of any seditious matter, to the purposes in that act of queen *Mary*, is made felony, upon which act the indictments of felony, before-mentioned, are grounded; but that act also expired by the death of queen *Elizabeth*. And in that case of the lord *Cromwell*, who brought a *scandalum magnatum* against the parson of *Norwicheham* in *Norfolk*, for saying, *That you like not of me, but you like of them that maintain sedition against the queen's proceedings*. Although, in the report of the case, *sedition* generally be called an open and heinous crime, and described to be as in the nature of some great factious assembly, or riot; yet the defendant justifies the words, by this, that the plaintiff and he had discourse of one that preached against the book of common prayer, and that in their discourse, the plaintiff said to the defendant, *I like not of thee*: To which he replied, *It is no marvel, for you like of them that maintain sedition*, (*praediçt. seditiosam doctrinam innuendo*) against the queen's proceedings; and the justification allowed good. Whence it appears clearly,

clearly, that *maintaining sedition* generally may be, such preaching of seditious doctrine which is punishable only by the statute of 1 Eliz. c. 1. by fine and imprisonment. Out of all which examples it appears, that *sedition*, and acts *seditiously* done, are of themselves singly, no capital crimes, or otherwise punishable than by fine or imprisonment, or both; unless by some special act of parliament it be ordained otherwise. And to confirm this also, we may observe divers other statutes; where, *roust, riots, rebellions, and insurrections* (all which, of themselves, if no traitorous intent appear, by some overt act, are punishable but by fine and imprisonment, unless some act of parliament especially ordain a greater punishment) have special punishments appointed for them; being, at the common law, but in the nature of trespasses. As in the 17 Rich. II. c. 8. it appears, that in the 5th year of the same king (which is 5 Rich. II. c. 6. stat. 1.) *outrageous assemblies* of the people against the king's dignity, and his crown, and the laws of the land (as every great riot is) were made *treason*; which act is long since repealed. Whence it is also very observable to this purpose, that in two acts of parliament, the one of the 2 Hen. V. c. 9. stat. 1. and the other of the 8 Hen. VI. c. 14. the simple word *riots* (which is most known in the law, to this day, for *seditious assemblies*) is taken plainly as an expression sufficiently comprehending assemblies of people, in great number, in manner of insurrection, and also rebellions, as will appear plainly, by comparing the preambles with the bodies of the same acts. And in 11 Hen. VII. c. 7. for the punishment of *unlawful raising and leading of people, riots, routs, and other unlawful assemblies*, a form of proceeding is appointed; wherein appears most plainly and expressly, that the punishment was only by fine and imprisonment, and the act was to continue but till the next parliament, when it expired. Therefore also by the act of 3 & 4 Edw. VI. c. 5. entitled, *An act for the punishment of unlawful assemblies, and rising of the king's subjects*, it was ordained, *That if any persons, to the number of twelve, or above, being assembled together, shall intend, with force of arms, unlawfully and of their own authority, to kill or imprison any of the king's privy council, or to alter, or change any laws established by parliament, and shall not depart and retire to their own habitations, within one hour after command made by the sheriff, some justice of the peace, or other such officer, in that behalf; the offence should be high treason. And if such persons assembled, to the pulling down of ditches, or laying open inclosures, or to the committing of some such more offences, retire not within that space, that it shall be felony in them. And if any should incite such persons to any such act, by speaking, ringing a bell, sounding a trumpet, firing of beacons, or the like; inasmuch that they remain together after any such command, as aforesaid, by the space of an hour, and commit any such act, as aforesaid, it should be felony also. And the persons so assembled, and remaining toge-*

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*ther, to the number of forty, by the space of two hours, are by the same made traitors. And that if the number be above two, and under twelve, that with force of arms, unlawfully, and of their own authority, assembled for the casting down of ditches, inclosures, and divers such other things, their staying together after such command by the space of an hour, should be punished by a year's imprisonment, and fine and ransom at the king's pleasure. And it is also in the same act ordained, That if any person shall procure, move, or stir any other person, or persons, to arise, or make any traitorous or rebellious assembly to the intent to do any of the things before-mentioned, it should be felony. And further, that if any person were spoken to, moved, or stirred to make any commotion, insurrection, or unlawful assembly for any of the intents before mentioned, and did not tell it within twenty four hours afterward, unless he have sufficient excuse, to some head officer where such speaking were had, should suffer imprisonment, until he were discharged by three justices of the peace, whereof one to be of the quorum. This act was to endure till the end of the next parliament only, which was in 7 Edw. VI. and then, cap. 11. it was continued till the end of the next, which was in 1 Mar. sess. 2. wherein, c. 12. it is repealed, and another of the same nature made. Both which shew most evidently, that those unlawful assemblies, insurrections, commotions, and the like, which are plainly *seditious*, provided for by those acts, were before but trespasses, punishable only by fine and imprisonment. That of the 1 Mar. sess. 2. c. 12. is entitled, *An act against unlawful and rebellious assemblies*, where the clause of the privy councillors (that was in the 3 & 4 Edw. VI.) is omitted; and the rest of the offence touching the altering of laws, is expressed, as in that of Ed. VI. saving, that the crime is made felony, whereas it was treason by that of Ed. VI. The rest of that act of 1 Mar. is, for the most part, agreeable with that of Ed. VI. saving, that none of the offences are treason by this act, but felony at the most. And for the being *spoken to, or stirred to make any commotion, and not discovering it*; here, in this of queen Mary, the offender is to suffer imprisonment only for three months, unless he be discharged by three justices of peace, as in that of Ed. VI. This of queen Mary, was kept on by continuance only, from one parliament to another, during her time; and in 1 Eliz. c. 16. it was made to continue during the life of queen Elizabeth, and at her death expired. To this purpose also the act of 14 Eliz. c. 1. is observable; where, *unlawful practices, secret conspiracies and devices, to take or surprize any of the queen's fortified castles, and the malicious and rebellious intent of surprizing, or taking them, being expressed by overt act, or word, are made felony; and the not giving them up within six days after command from her, is made treason; which act also expired with her life. Here the offences made treason and felony by the act, were both *seditious* of a high nature; and yet**

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but

but trespasses before the act made, nor are they other now the act is expired. For the surprizing or detaining of a castle, without levying of war, or some other act of treason (as in *Sherley's case in Dyer*) was not treason, but by that act. To these we may justly add that case of the earl of Northumberland in 5 H. IV. 5 Hen. IV. rot. parl. n. 11. 12. &c. He acknowledged by writing, in parliament, that he was guilty of not keeping the laws as ligeance askeith, and of gathering power, and giving of liveries, (which are the words of the parliament roll) and upon special consideration had, by the lords and judges in parliament, of the nature of the offence thus set forth; they adjudged it was neither felony nor treason, but only trespass; and so are the express words of the roll. Yet the gathering of power, and giving liveries, and breaking of allegiance, are large expressions of that, which in itself, was truly sedition, and that of a high nature. And thus, both by the use of the words, and the punishments provided, in some cases in parliament, for remedy of the offence (without which special provision it is never found capital) it appears clearly that sedition, or the stirring of sedition, alone, at the common law, (and no statute, now in force, hath ordained otherwise) is but trespass, and punishable only by fine and imprisonment.

Now for the words against us; that is, against the king. There is no doubt at all, but that all offences are against the king. Every slight trespass, by the law, is *contra pacem domini regis*, and whatsoever is against his peace, is against him; as also divers indictments of meer trespasses, conclude with *in contemptum domini regis*; and *contra coronam & dignitatem suas*: As in an indictment for hearing of mass, is *contra pacem, dignitatem & coronam domini regis*. All which import against the king. And that act of 23 Eliz. is made against seditions words against the queen's most excellent majesty; which, even after the act, remained not capital, being before but trespass. And in the preamble of that of 14 Eliz. it appears, the act was made against unlawful practices, secret conspiracies and devices, stirred and moved against our sovereign lady the queen, in seeking unlawfully to take her castles, fortresses, and the like. And in *Bratton*, fol. 119. b. §. 3. & 120. b. §. 6. the concealing of treasure, which is punishable by fine and imprisonment, is expressly said to be, *gravis praeiumpcio contra regem, & dignitatem, & coronam suam*; as also the not keeping the assises of bread and ale, and the like. Neither is there any doubt of this, but that the words, against the king, may be applicable to any kind, and as well to the least as the greatest kind of offences, and imply nothing that increaseth the offence above trespass.

It follows then, for the last part of the consideration, that (sedition being but that which we otherwise call unlawful assemblies, riot, mutiny, rebellion, or the like; and every offence, punishable, being against the king) the stirring

up of sedition against the king, which is, or may be, the stirring up of a rout, unlawful assembly, mutiny, rebellion, or the like, against some ordinary, or extraordinary command, process, writ, or execution of some established law, is no other offence, by the expression in the return; nor can thereby be understood to be other (without some special act of parliament have altered the law) than trespass, and punishable only by fine and imprisonment, and so, by consequence, no treason. As for a special act of parliament, that maketh sedition against the king, to be higher than trespass, there is none such extant. Among all the acts of parliament that are in force, there is none gives any colour here, but that of 25 Ed. III. wherein treason is declared: And in that act, only these words: *If anyone levy war against our lord the king, in his realm, or be adhering to the enemies of our lord the king in his realm, giving to them aid or comfort in his realm, or elsewhere, and herof be attainted of overt fact, it is high treason*. The other words concerning other and higher treasons, in that act, have nothing that can so much as of themselves suppose a sedition against the king. But it is true, that in these before recited, there may be a sedition against the king; that is, the levying of war against the king may be by sedition, or the adhering to the king's enemies, or the levying of war against him, may be, by a low expression, perhaps styled sedition against the king; as in every greater crime, as in theft, trespass may be included, or understood. Now, unless on the other side, in that which is sedition against the king, treason must necessarily be understood, these words of the 25 Ed. III. make no more to prove that sedition is treason, than any act against theft, can prove that trespass is felony. Therefore also in that very act of 25 Ed. III. the riding openly or secretly with armed men to kill or rob another man, or to take him, and keep him till he make fine and ransom for his deliverance (though it be plainly sedition against the king, it being against his peace, his laws, and his crown and dignity) is but felony, if robbery be committed with it, and trespass only if imprisonment till fine and ransom. And so is it declared expressly in that act. And though there have been divers acts of parliament since that of the 25 Ed. III. that have made divers other facts treason, yet there is none of them that remain unrepealed, or not expired, that make any such fact treason, as is of the nature of sedition against the king: And except only the treasons made by those special acts of parliament that remain in force (as those concerning bulls from Rome, jesuits, clipping of coin, and some few more) there is nothing at this day treason, saving what is comprised in that act of 25 Ed. III. to which some special laws have, in the ages since Ed. III. now and then reduced all treason, by abrogating all intervenient laws of treason. And by that act, if there be a doubt that happens before the judges, by reason of any new case that comes before them; they ought not to judge it treason, until it be enacted by parlia-

† Vide 11 Rich. II. c. 3. pet. 3. 1 Hen. IV. c. 10. 1 Ed. VI. c. 12. 1 Mar. parl. 1. c. 6.

ment to be so. And it doth, in the same act, appear, that before that time, there was a greater latitude of treason, than at any time since. Now, even in that time, there is an express judgment of the very point in question; though not in the same terms with this case, yet in the self same sense, as if this case had then been before the judges. It was the case of one *Ruffel*; he was imprisoned by the justice of north *Wales*, in 9 *Ed. III.* and returned to be so, *eo quod A. B. imposuit ei fecisse debuisse diversas seditiones, &c. dominum regem tangentes.* Upon this return, the court adjudged, that the offences contained in the return, and as they could thereby be understood, were such for which he ought to be bailed; and they gave their reason with the judgment, *because it did not appear what kind of seditions against the king were meant by it. Eo quod non specificatur quales seditiones, &c. Ideo dimittendus*, by mainprife or bail, which to this purpose are all one. For if the *sedition* had been with traiterous intents, and so expressed, then it had been treason, for which they would not have let him to mainprife. But because *sedition* against the king, might be of divers other natures, and merer trespasses, therefore they said, *ideo dimittendus est*, expressing therein the right of the prisoner, that he might justly claim to be bailed, and by law, ought to be bailed, and not only that he was bailable. But three objections may, perhaps, be made to this judgment, to make it differ in substance from the case in question. The first, that *A. B. imposuit ei fecisse debuisse diversas seditiones, &c.* which being as an accusation in so general terms, was not certain enough to make him answer to it, and that thence might be the cause of the judgment. The second, that it is not *contra dominum regem, or against the king*, as the case here is, but *tangentes, or touching the king*. And the third, that here is the king's warrant witnessing the offence, and command for imprisonment, and in that of 9 *Ed. III.* only the charge of a subject and the commitment of a subject. To all three, the reply is easy. For the first, it is plain, that the justice of north *Wales*, shews the reason of the imprisonment to be, because *Ruffel* was charged by *A. B.* to have committed *sedition touching the king*, as every one that is returned to stand committed for any offence, is supposed to stand so committed, because somebody charged him, or accused him, or can testify against him; and that is here more particularly expressed, which in every return is supposed to be understood in the general words. As, suppose the return were, that such a one stands committed for treason, or murder, upon the accusation, testimony, or examination of *A. B.* taken thus, or thus; would the court bail him the sooner for that addition? And in returns, it was never expected that there should be such certainty as that the prisoner might plead and be tried. Which can never be done from returns, but only by appeals or indictments, wherein the offence is in special set forth by time, place, and all circum-

stances. Or, if they had, in this case of *Ruffel*, expected or considered such a certainty, they ought not to have let him into mainprife, or bailed him; but clearly dismissed him. For, if an appeal, which is an accusation, were brought against a man, or an indictment put in *de diversis murdris, or de murdro*, generally; or, *de prodicione* generally; clearly, upon such an appeal or indictment, the court would not put the party neither to answer, nor so much as to the trouble of bail or mainprife, because such a charge that way, were merely void. For in appeals and indictments, the particular circumstance, and the special offence must always be set forth, or else they are void; but, in returns, the general expression is sufficient for the court to judge, whether the offence be such, as that the prisoner ought to be bailed or no, as the common and most known practice is. So that the first objection is of no force. For the second, it is certain, that the words *tangentes regem, and contra regem*, in matter of offences, occurring in our laws, are taken as synonymous. As in the 25 *Ed. III. stat. de clero cap. 4.* we have *Treasons or felonies*, *touchants auters persons que le roy mesme ou son royal majestie; touching others than the king*; which is the same with, *being against others than the king, or besides the king*; that is, *petit treasons*, (which are both treasons and felonies) as it appears in *Stamford, l. 2. c. 43. fol. 124. b.* High treason being *touching the king, or against the king, or extending to the king*; which is the same in 25 *Ed. III. de prodicionibus*. Where the sense of the words appear by a law made but few years after this very case of *Ruffel*. So in *Westmin. 1. ch. 15. treason que toucha le roy mesme*, is expressly for *treason against the king*; that is, high treason. And *Bracton, fol. 119. b. §. 2.* calls the counterfeiting the great seal, which is high treason to this day, *Crimen læsæ majestatis quod tangit coronam regis, or, treason against the king*. And in this latter age, we see in the statute of 14 *Eliz. cap. 2.* that *treason touching the person of the queen, and treason concerning the person of the queen*, are both as the same, and both for *treasons against the queen's person*. So that *tangentes regem, and contra regem*, denote the self-same thing in the law; and for that matter, *Ruffel's* case, and this return are of the self-same nature. Now for the third objection concerning the king's warrant and command in this present case, which is not in that of *Ruffel's*, but only the accusation, or charge, and command of a subject. For the command singly considered, it is clearly against the petition of right: But if it be considered here (as it ought) joined with the cause of commitment, then the cause is only considerable by itself, as expressed by the warrant. But there is no book-calc, act of parliament, or other testimony of law with us, that in this kind of consideration makes any difference between the expression of an offence, in a return of the king's warrant, and the expression of it in a return of a subject. For all returns of this kind, in judgment of law, are supposed true;

true; and the sole point examinable, for matter of bail, is the nature of the offence; unless the commitment were by one that might not commit, or that some other circumstance, not concerning these matters, were in the case. And besides, in 22 *Hen. VIII. rot.* 38. *Parker's case*, & 1 *Hen. VIII. rot.* the king's command for commitment for murder, and other offences of high nature, hath been in the return, where the prisoner was bailed. Nor will there remain any colour of testimony to maintain this last objection.

And as against this case of *Russel* (which is so fully in the point) these objections may be made; so against the main, the conclusion, it may be objected out of those old authors, *Bracton*, *Glanville* and *Hengham*. That *Bracton* in express words, makes *sedition domini regis* to be treason. *Si quis aliquid egerit* (saith he, fol. 118. b.) *ad seditionem domini regis, vel exercitus sui, vel procurantibus auxilium & consilium praeberit vel consensum*, it is *crimen laesae majestatis*, to be punished with death, and so supposes it high treason. So *Glanville*, *Si quis machinatus fuerit, vel aliquid fecerit, in mortem regis, vel seditionem regni, vel exercitus*; he saith it is likewise treason. And *Hengham* bringing examples of the *placita de crimine laesae majestatis*, adds, *ut de nece vel seditione personae domini regis, vel regni, vel exercitus*. Where we see, *sedition regis*, or *regni*, or *exercitus*, is supposed treason. But the answers to the authority of these old authors is various. First. However they were all three (if at least that of *Glanville* be the work of Sir *Randal Glanville*, chief justice of *England* under *Henry II.*) learned and famous judges in their ages, yet they lived so long since, and the rest of the particulars of which they write, are so different (whether we observe the pleas of the crown in them, or the pleas between party and party) from the practice and established laws of the ensuing ages, that their authority is of slight, or no moment for direction in judgment of the law at this day, though it be very considerable in examination what the law was in their times; and that way it sometimes is used as an ornament in argument only, as it is said in the commentaries of them. The first of them died about 400 years since; the second, about 350; and *Hengham* about 300 years past. Secondly. The words of *sedition regis*, or *regni*, are an obscure expression, and hardly so intelligible as that we may know what they meant. For what can *sedition of the king* mean, in *English*, or in *Latin*, as they express it? And if it be taken for *sedition against the king* (as indeed the like words are interpreted in *Scottish*, out of the *regiam majestatem*, by Mr. *Skene*) it must be so taken against all grammar, and usual context of words, for no more than *tumultus regis*, *rebellio regis*, *insurrectio regis*, is *tumultus against the king*, or *rebellion against the king*, or *insurrection against the king*, is *sedition regis*, in force of language, *sedition against the king*. Thirdly. Admit it be rightly taken for *sedition against the king*, in those old authors, yet the statute of 25 *Edw. III. de prodicionibus*, to

settles the law for treason, that whatsoever was treason before that act, and is not comprised within that act, is no treason at this day, unless some special act of parliament have ordained it. Fourthly. The constant course of testimonies, as they are before shewed, since the 25 of *Ed III.* prove expressly, that only *sedition against the king* is taken for a less offence, and mere trespass. Fifthly. In particular offences, we see *Bracton*, (whose authority is the chief of the three, whether we regard the expression, or the quality of the writer) differs much from the common law of the later ages; and so much, that he is directly, in some things of great moment, contrary to the clear known law, both of the present and of ancient times. As, he allows no killing of a man to be murder, but what is done so secretly, that it is not known who doth it. *Bracton*, l. 3. *de corona*, fol. 134. b. & 135. And that if the offender be taken, or, if the party hurt, live long enough to discover him that hurt him, though he die afterward, it is (saith he) no murder. Which is directly contrary to the law, yet altered by no special act of parliament. So, *Si quis alterius virilia absiderit, & libidinis causa, vel commercii castraverit, sequitur* (saith he, p. 144. b. §. 3.) *poena aliquando capitalis, aliquando perpetuum exilium, cum omnium bonorum ademptione*; whereas there is no such thing in the laws of *England*. But indeed, by the civil law, *Qui hominem libidinis, vel promercii causa castraverit, poena legis Corneliae de scariis punitur*; that is, is punishable capitally. *ff. ad leg. Corn. de scariis. l. 3. §. 4. & l. 4. §. ult.* Whence doublets *Bracton* (who cites often, to other purposes, the very texts and words, and quotes the places of the *digests*, and the *code*) had that punishment for such as gelded men. And thence also had, by all likelihood, that touching *sedition*. For, by the civil law, all *sedition*, publick raising of tumults, gathering armed men, without publick authority; and whatsoever is but with us as a commotion or riot, is treason (*crimen laesae majestatis*) and capital. To which purpose there be divers texts in that law *ff. ad leg. Juliam majest. l. 1. & de poenis. l. 38. §. 2. de appellationibus. l. 16. C. de seditionibus. l. 1. §. 2. Sc.* which doublets he both read, and often followed; and by concitators *seditionis*, or *stirrers up of sedition*, by that very name were condemned as capital traitors. But this was never, for ought appears, law in *England*; but the contrary appears plain enough by what is already said. Sixthly. For answer to the objections out of *Bracton* and *Glanville*, if their authority shall be taken sufficient to maintain *sedition* to be treason; then will it be as reasonable to prove, that in such a case bail also should be taken. For *Bracton* saith expressly of that and other treasons that he joins with it, that the prisoner ought to be bailed, unless an accuser be present. *Si quis*, saith he, *de hoc crimine diffamatus fuerit, tunc videndum erit utrum appareat accusator, vel non; si autem nullus appareat, nisi sola fama quae tantum apud bonos & graves oriatur, hic salvo* attachi-

attachiabitur per salvos & securos plegios; vel si plegios non habuerit, per carceris inclusionem, donec de crimine sibi imposito veritas inquiratur. And Glanville saith expressly, that although an accuser be present, yet he is to be bailed. *Etsiam si accusator fuerit (saith he) accusatus dimittitur per plegios, aut si non fuerit, in carcerem dimittitur.* So that either the authority of these old authors is of no moment, for the reasons before shewed; or if it be valuable, and that advantage must be taken from them; it is as reasonable that their other opinion, for the bail, be as well accepted and allowed of in this case. But there remains, perhaps, one objection, out of the opinions of *Tresilian* and *Bellinap*, the two chief justices; and of *Holt*, *Fulthorp* and *Burgh*, justices of the common pleas, and *Lokton*, one of the king's serjeants in 11 *Rich. II.* (*Vide* 21 *Rich. II. c. 11.* see the roll.) Who being, among other things, demanded at *Nottingham* by the king, and charged to answer, upon their faith and liegeance to the king, how they ought to be punished that did interrupt the king, so that he might not exercise those things that pertaineth to his regality and prerogative; (in which words perhaps, may be included all kind of sedition against any proceeding, process, or ordinary command of the king) with one assent they answered, that they ought to be punished as traitors. And if that were law, it were hard to find a sedition against the king, but that it were treason. For all his proceedings, process, and ordinary commands, belong to his regality and prerogative, and every sedition against him, is a kind of interruption of the exercise, at least, of those proceedings, process, and ordinary commands.

It is true, that in the 11th of *Rich. II.* such an answer, among divers others of like nature, were given by those judges, and that serjeant; and they put their seals also to them. But it is as true, that for these very answers they were accused by the commons in parliament, the self same year, where they answered upon the accusation: First. That the answers were written in the original to which their seals were put, otherwise than their meaning was, in some part. Secondly. That they had been threatened to make no other answer than what might agree with the king's liking. Thirdly. That their answers proceeded not of their free will, but for fear of death; and that some of them had revealed as much to the earl of *Kent*, desiring him to witness as much hereafter, if time served. *Rot. parl. 11 Rich. II. m. 14. & vide stat. 11 Rich. II. c. 3. §. 5.* Notwithstanding all which, at the instance of the commons, they were adjudged all, by declaration in parliament, made by the king and commons (which was according to the act of 25 *Edw. III.* and so by act of parliament) to be traitors, and to suffer as in case of treason; good part of which proceeding is remembered in the statutes of that year, but much more in the rolls of that parliament. And although in the parliament of 21 of *Rich. II.* that parliament, and in part-

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cular, this proceeding against the judges, were wholly annulled, and their answers adjudged good; as appears in the printed statutes of that year, 21 *Rich. II. c. 12.* Yet in the 1st of *Hen. IV.* it was declared by parliament, t *H. IV. c. 3.* that this proceeding of parliament of 21 of *Rich. II.* being caused by a certain number only, of the members of parliament, and that the statutes, judgments, ordinances, and establishments, were made, ordained, and given erroneously and deceitfully in great dishonour and final destruction, and undoing of the liege people of the realm. Where also it was further declared and adjudged, in the same parliament, that all the parliament of 21 *Rich. II.* and all circumstances and dependents thereupon to be of no force or value, but annulled. And besides, that the parliament of the 11th of *Rich. II.* wherein those judges were condemned as traitors, for that answer, and all the rest of that kind, should be firmly holden and kept, after the purport and effect of the same, as a thing made for the great honour and common profit of the realm. So that that answer of the judges, in the 11 of *Rich. II.* so highly condemned as false and erroneous, by two parliaments, both which have to this day continued in firm strength, is of no weight to prove that sedition against the king is treason. Nor doth any thing else prove it, but the contrary is manifested by the arguments before urged. And by consequence, it is only trespass against the king, and punishable by fine and imprisonment, and therefore the prisoner returned to stand committed for stirring it up against the king, ought to be bailed.

Of the liberty of the subject. 1628. Mar. 27.

I WAS sent hither, and trusted with the lives and liberties of them that sent me. Since I came, I took here an oath to defend the king's prerogatives and rights. I profess, tho' once I was of counsel, and then I spoke for my fee, for the gentlemen in their *babeas corpus*; yet now I speak according to my knowledge and conscience.

The question is, whether any subject or freeman, that is committed to prison, and the cause not shewn in the warrant, he ought to be bailed, or delivered? I think, confidently, it belongs to every subject, that is not a villain, that he ought to be bailed, or delivered.

I shall speak in this course. 1. I will shew the reasons. 2. Acts of parliament. 3. Precedents. 4. Answer objections.

1. Reasons drawn from three heads;

1. From remedies provided by the common law against imprisonment. For that precious thing of liberty there are divers remedies, by which it appears, if no known cause be of further detainment, he is to be delivered. I will not mention the action of false imprisonment, but the writ *de odio & atia*, which is not taken away, for that it is in *magna charta*. That writ was sent to know, if the party imprisoned were committed for any cause of malice and

11 Y

hatred,

hated, and this was to be enquired of in jury. For the writ *de homine replegiando*, if one be imprisoned under the sheriff, he must be delivered, if he be not detained for a cause for which he is not repleviable. For the *habeas corpus*, the keeper is to bring the body *ad subjiciendum & recipiendum*. If there be no cause, how can the court consider of the cause? For appeal, by the old law in the time of *Hen. I.* one imprisoned might have his appeal, as appears by *Bracton*, c. 25. *lib. de corona. Fleta*, c. 42.

2. The second reason is from the consideration of freemen and villeins. All admit we are *liberi homines*; but do but consider the difference of villeins and freemen, and I know no difference in their persons, but only the one cannot be imprisoned, as the other may. Whoever can say I can imprison him, I will say he is my villen. It is the body and sole distinction of freemen, that they cannot be imprisoned at pleasure.

In old time none but *Jews* and villeins could be imprisoned, and confined. The *Jews* were as demesne villeins of the king; he could send to them to lend money, and if they did not, he imprisoned them.

3. From matter of punishment. When any thing is declared by any new statute to be an offence, it goes, that he shall be fined and imprisoned. To what end were this in any act of parliament, if imprisonment was at the king's will.

II. For acts of parliament, *magna charta*, c. 19. In that act, when it was first made, it was *neccum in carcere mittimus*, 17 *Joh.* that statute was made, and then it had those words. The course then was to send down all acts of parliament and charters to the abbies to be enrolled. *Matth. Paris*. 345. & 342. recites that charter of 17 *Joh.*

They object in *magna charta*, there is *lex terrae*, and by the law one may be imprisoned.

Lex terrae is the process of law, for the law imprisons no man at all, but it is meant the process of law. 5 *Edw. III.* Upon some occasion it was enacted, That none be attached contrary to the great charter and the law of the land, 25 *Edw. III.* divers were committed to the Tower, and no man knew wherefore, whereupon was 25 *Edw. III.* made. 28 *Ed. III.* c. 3. 36 *Edw. III.* n. 9. is against imprisonment, *per speciale mandatum*.

III. For precedents, 18 *Edw. III.* rot. 33 *H. I.* *Hen. VIII.* rot. 9. 12 *Jac. rot.* 153.

IV. Objections against it. First, Against the reason; A man may be committed for a point of state that may not be known; I understand not matters of state; I expected not the objection in a court of justice; and it may be a word for any king to try the courages of his judges, and to suppose there is a cause of state, when perhaps there is no cause appears to them. It is as if they sent him back to prison, they knew not wherefore, which cannot be in a court of justice, where they are sworn to do justice.

Secondly, As to the acts of parliament, the

judges gave no answer, but only commended them; but the attorney answered them with one blow to strike them all: That they are to be considered for common and ordinary causes, that happen in *W^estminster-hall* only. But do but consider *magna charta*, which reflects upon the king; *nec super eum ibimus*. By the law, if I bring an appeal of murder against a nobleman, which is my suit, he shall not be tried by his peers; but if he be indicted for that murder, which is the king's suit, he shall; which shews, that that which is in *magna charta* is meant of the king, though it be not in the third person.

Third objection is against the statute of *W^estminster*, 1. c. 15. But the king's command, is the command of the king by his justices; and also the word *repleviable*, never signifies bailable; bailable, is in a court of record, by the king's justices; but repleviable, is by the sheriff. The statute is to the sheriff, and it shews the particular causes, and concludes that the sheriff shall lose his bailiwick. The sheriff could never replevy one for murder, or matters of the forest; but in the king's bench for murder or matters of the forest they may, 3. *assise*. 19. 21 *Edw. IV.* 25. 22 *Hen. VI.* 48. *Newton*. If any man be taken by our command, or by the command of the king, if the sheriff take the party, he must come to us, we will grant a *superfedeas*.

Fourthly, They object against the precedents cited; they are all of this kind, they were imprisoned *per mandatum domini regis*, or *concilii* without cause, or the cause is expressed. When the cause is expressed, and is within the cognizance of the court, there they bailed him; but when it is for felony or treason, it may be done beyond the seas, and then the court has no cognizance of them. When no cause is set, yet bailment is alledged; then they answer, divers were so bailed, but the cause appears by paper books; but I never saw these books to be records, and judges of record made their judgment in records, and the cause only appears by record.

For the resolution cited 34 *Eliz.* all precedents were read, acts of parliament indeed were passed over, and yet that was not read. As we have that liberty here, so I dare say, no prince in christendom doth assume this power to imprison any without any cause. I find no steps or vestigium of any such power.

About the employment of the subject in foreign services. April 3, 1628.

THE question consists of two parts: It is one thing for every subject to receive press-money as a soldier, and another thing to go upon any other service as ambassador, or otherwise.

First, Whether every subject shall receive press-money if it be offered? I hold it clearly he is not. I shall express the old course for soldiers. Three courses were used for levying of forces

forces for wars. 1. By calling them together who were bound to serve by tenure. 2. By sending to those, who by covenant were engaged to serve the king. 3. By this new way of pressing. For the first, the tenure doth yet continue. Before the conquest, there was no man but was some way subject to the wars, and to arm men; and nothing is more frequent in *domesday*. They were to send soldiers to the wars according to the quantity of lands they had. And all land was liable to the conqueror, having gained a great part of his land into his hands by forfeiture. He gave so much land as he was able to have 6000 knights, and armed men by their tenure. And in all succeeding times, the frequent course was, that men by their tenure were to serve the king. Nothing is more frequent in the rolls and records. Now reckon when the conqueror gave 6000 knights fees, which must be at the least 20 *l. per ann.* to a knight's fee; he would not have given so much, if he could have compelled men by his prerogative.

Ordricus Vitalis, p. 523. printed at Paris, writes of William the Conqueror accordingly; *Bracton* 36. speaking of *regale servitium*, saith, *Quod fuit in conquestu adinventum*; and speaking of *servitia forinseca*, saith, *illa persolvuntur ratione teneamentorum non ratione personarum*. In *Ed. III.*'s time, there was a great question between the king and the subject upon this point. The king being willing to go into Flanders, some great men opposed it; and the commons being called together, all were summoned that had the value of 20 *l. per ann.* to come to London, *transfretare in Flandriam*. Sundry men came, and a parliament ensued, and the parliament made a declaration by way of petition; and the commons and lords joined together, and declared, That it was against right to be summoned to come to London, and they knew not to what place they should go. *Flanders* was too large a place, and they said, they ought not to go to service there. *Quia nec ipsi nec predecessores sui unquam fecerunt servitia in terra illa*. Amongst them that were summoned, those only were tied, who held by tenure, but others were not at all, and the title is here, *For employment in foreign forces*. This appears both by history and by ancient mss. which I have seen, and can shew to any. 1. *Edward III.* No man is to go out of his country but for defence of the realm: when enemies come into the realm. 2. For the point of covenant with the king, to serve him in his wars. From the time of *Ed. II.* till *Hen. VIII.* that was the frequent way. The barons and great men, could raise a thousand men at any time. 3. For pressing; none may grieve from whence it came. When those covenants were in use with great men; when their greatness ended, then great officers began to press men. Some object a statute in the time of *Hen. VII.* 11 *Hen. VII. c. 1.* But that statute is only for defence within the realm. 2. *Ed. VI. c. 2.* There it recites, that some men covenanted to serve the king. 11 *Hen. VII. c. 1.* The recital is, Whereas

every subject is bound to serve the king in his wars within the realm. 18 *Ed. III. c. 7.* 18 *Hen. VI. c. 18.* 19. speak of soldiers that were retained and departed. In 7 *Hen. VII. c. 1.* there is a statute for those that are retained in the king's service and departed. 3 *Hen. VIII. c. 5.* If any be retained to serve the king, &c. But in all these statutes, there is not a word of any soldiers pressed, or sent away by compulsion; and so then the law knew no pressing.

The argument, which by the command of the house of commons was made at their first conference with the lords, touching the personal liberty of the person of every freeman, out of precedents of record, and resolutions of judges in former times. April 7. 1628.

MY LORDS,

YOUR lordships have heard from the gentleman that last spake, a great part of the grounds upon which the house of commons upon mature deliberation proceeded to that clear resolution touching the right of the liberty of their persons. The many acts of parliament, which are the written laws of the land, and are expressly in the point, have been read and opened, and such objections as have been by some made to them, and some objections also made out of another act of parliament, have been cleared and answered. It may seem now perhaps (my lords) that little remains needful to be further added, for the enforcement and maintenance of so fundamental and established a right and liberty belonging to every freeman of the kingdom. But in the examination of questions of law of right, besides the laws or acts of parliament, that ought chiefly to direct and regulate every man's judgement, whatsoever hath been put in practice to the contrary, there are commonly used also former judgments or precedents, and indeed have been so used sometimes, that the weight of reason, of law, and of acts of parliament, hath been laid by, and resolutions have been made, and that in this very point, only upon the interpretation and apprehension of precedents. Precedents, my lords, are good *media* or proofs of illustration or confirmation, where they agree with the express law, but they can never be proof enough to overthrow any one law, much less seven several acts of parliament, as the number of them is for the point. The house of commons therefore taking into consideration, that in this question, being of so high a nature, that never any exceeding it in any court of justice whatsoever, all the several ways of just examination of the truth should be used, have also most carefully informed themselves of all former judgments or precedents, concerning this great point either way; and have been no less careful of the due preservation of his majesty's just prerogative than of their own rights. The precedents here are of two kinds

kinds, either merely matter of record, or else the former resolutions of the judges after solemn debate in the point.

This point that concerns precedents, the house of commons have commanded me to present to your lordships, which I shall as briefly as I may, so I do it faithfully and perspicuously. To that end, my lords, before I come to the particulars of any of those precedents, I shall first remember to your lordships, that which will seem as a general key for the opening and true apprehension of all them of record; without which key, no man, unless he be versed in the entries and course of the king's bench, can possibly understand them.

In all cases, my lords, where any right or liberty belongs to the subjects by any positive law written or unwritten, if there were not also a remedy by law for the enjoying or regaining this right or liberty when it is violated or taken from him, the positive law were most vain, and to no purpose; and it were to no purpose, for any man to have any right in any land or other inheritance, if there were not a known remedy, that is, an action or writ, by which in some court of ordinary justice, he might recover it. And in this case of right of liberty of person, if there were not a remedy in the law for regaining it when it is restrained, it were of no purpose to speak of laws that ordain, it should not be restrained. Therefore in this case also, I shall first shew you the remedy that every freeman is to use for the regaining of his liberty, when he is against law imprisoned, that so upon the legal course and form to be held in using that remedy; the precedents or judgments upon it, for all judgments of record rise out of this remedy, may be easily understood. There are in law divers remedies for enlarging of a freeman imprisoned, as the writs of *odio & atia*, and of *hominie replegiando*, besides the common or most known writs of *habeas corpus*, or *corpus cum causa*, as it is called also.

The first two writs are to be directed to the sheriff of the county, and lie in some particular cases, with which it would be untimely for me to trouble your lordships, because they concern not that which is committed to my charge. But that writ of *habeas corpus*, or *corpus cum causa*, is the highest remedy in law for any man that is imprisoned, and the only remedy for him that is imprisoned by the special command of the king, or the lords of the privy council, without shewing cause of the commitment; neither is there in the law any such thing, nor was there ever mention of any such thing in the laws of this land, as a petition of right to be used in such cases for liberty of the person; nor is there any legal course for enlargement to be taken in such cases, howsoever the contrary hath, upon no ground or colour of law, been pretended. Now, my lords, if any man be so imprisoned by any such command, or otherwise, in any prison whatsoever through *England*, and desire by himself, or any other in his behalf, this writ of *habeas corpus*, for the purpose, in the court of the king's bench, the writ

is to be granted to him, and ought not to be denied him, no otherwise than another ordinary original writ in the chancery, or other common process of law may be denied; which, amongst other things, the house resolved also, upon mature deliberation; and I was commanded to let your lordships know so much. This writ is directed to the keeper of the prison in whose custody the prisoner remains, commanding him, that after a certain day, he bring in the body of the prisoner, *ad subjiciendum, & recipiendum, juxta quod curia consideraverit, &c. una cum causa captionis, & detentionis*, and oftentimes, *una cum causa detentionis* only, *captionis* being omitted.

The keeper of the prison thereupon returns by what warrant he detains the prisoner; and with his return filed to his writ, brings the prisoner to the bar at the time appointed: When the return is thus made, the court judgeth of the sufficiency or insufficiency of it, only out of the body of it, without having respect to any other thing whatsoever; that is, they suppose the return to be true, whatsoever it be; if it be false, the prisoner may have his action on the case against the gaoler that brought him. Now, my lords, when the prisoner comes thus to the bar, if he desire to be bailed, and that the court upon the view of the return, think him in law to be bailable, then he is always first taken from the keeper of the prison that brings him, and committed to the marshal of the king's bench, and afterwards bailed, and the entry perpetually is, *committitur marescallo & postea traditur in balli*; for the court never bails any man, until he first become their own prisoner, and be in *custodia marescalli* of that court. But if upon the return of the *habeas corpus*, it appear to the court, that the prisoner ought not to be bailed, nor discharged from the prison whence he is brought, then he is remanded, or sent back again, there to continue, until by course of law he may be delivered; and the entry in this case, is *remittitur quousque secundum legem deliberatus fuerit, or, remittitur quousque, &c.* which is all one, and the highest award or judgment, that ever was, or can be given upon a *habeas corpus*. But if the judges doubt only whether in law they ought to take him from the prison whence he came, or give a day to the sheriff to amend his writ, as often they do, then they remand him only; during the time of their doubt, or until the sheriff hath amended his return, and the entry upon that is *remittitur* only, or *remittitur prisonae praed.* without any more. And so *remittitur* generally, is of far less moment in the award upon the *habeas corpus*, then *remittitur quousque, &c.* howsoever the vulgar opinions raised out of the late judgment be to the contrary. All these things are of most known and constant use in the court of king's bench, as it cannot be doubted but your lordships will easily know from the grave and learned my lords the judges.

These two courses, the one of the entry of *committitur marescalli. & postea traditur in ballium,*

ballium, and the other *remittitur quousque*, &c. & *remittitur* generally, or *remittitur prisonæ præd.* together with the nature of the *habeas corpus*, thus stated, it will be easier to me to open, and your lordships to observe, whatsoever shall occur to the purpose in the precedents of record, to which I shall come now in the particular. But before I am come to the precedents, I am to let you know the resolutions of the house of commons, touching the enlargement of a man committed by the command of the king, or the privy council, or any other, without cause shewed of such commitment: It is thus; that if a freeman be committed or detained in prison, or otherwise restrained by the command of the king, the privy council, or any other, and no cause of such commitment, detainer, or restraint, to be expressed, for which, by law, he ought to be committed, detained, or restrained, and the same be returned upon a *habeas corpus* granted for the party, then he ought to be delivered and bailed.

This resolution, as it is grounded upon the acts of parliament already shewn, and the reason of the law of the land, which is committed to the charge of another, and anon, also to be opened to you, is strengthened also by many precedents of record.

But the precedents of record that concern this point are of two kinds, for the house of commons hath informed it self of such as concern it either way. The first such as shew expressly that persons committed by the command of the king, or of the privy council, without other cause shewed, have been enlarged upon bail when they prayed it; whence it appeareth clearly, that by the law they are bailable, and so by *habeas corpus* to be set at liberty; for though they ought not to have been committed without a cause shewed of the commitment, yet it is true, that the reverend judges of this land did such respect to such commitments by the command of the king or of the lords of the council (as also to the commitment sometimes of inferior persons) that upon the *habeas corpus*, they rarely used absolutely to discharge the persons instantly, but only to enlarge them upon bail; which sufficiently secures and preserves the liberty of the subject according to the laws that your lordships have already heard; not in any of the cases is there any difference made between such commitments by the lords of the council, that are incorporated with him. The second kind of precedents of record are such as have been pretended to prove the law to be contrary, and that persons so committed ought not to be set at liberty upon bail, and are in the nature of objections out of record.

I shall deliver them summarily to your lordships with all faith, and also true copies of them, out of which it shall appear clearly to your lordships, that of those of the first kind there are no less than twelve most full and directly in the point, to prove that persons so committed are to be delivered upon bail, and amongst those of the other kind, there is not so much as one, not one, that proves at all any thing to

the contrary. I shall first, my lords, go through them of the first kind, and so observe them to your lordships, that such scruples as have been made upon them, by some that have excepted against them, shall be cleared also, according as I shall open them severally.

The first of the first kind is of *Edw. III.*'s time. It is in *Pastb 18 Edw. III. rot. 33.* the case was thus;

King *Edw. III.* had committed by writ, and that under his great seal (as most of the king's commands in those times were) one *John de Bildeston*, a clergyman, to the prison of the *Tower*, without any cause shewed of the commitment. The lieutenant of the *Tower* is commanded to bring him to the king's bench, where he is committed to the marshal; but the court asks of the lieutenant, if there were any cause to keep this *Bildeston* in prison, besides that commitment of the king? he answered no; whereupon the roll says, *Quia videtur cur. bre' præd' sufficient' non esse causam præd' Joh. de Bildeston in prisona dom' regis hic detinend' idem Johannes admittitur per manucap- tionem Willielmi de Wakefeld*, and some others, where the judgment of the point is fully declared in the very point.

The second in the first kind of precedents of records is in the time of *Hen. VIII.* one *John Parker*'s case, who was committed to the sheriffs of *London*, *pro securitate pacis*, at the suit of one *Brinton*, *ac pro suspitione felonie* committed by him in *Glocestershire*, *ac per mandatum domini regis*, he is committed to the marshal of the king's bench, & *postea islo eodem termino traditur in ball'*. Here were other causes of the commitment, but plainly one was by the command of the king, signified to the sheriffs of *London*, of which they took notice. But some have interpreted this, as if the commitment had been for suspicion of felony by the command of the king; in which case it is agreed of all hands, that the prisoner is bailable. But no man can think so of this precedent, that observes the context, and understands the grammar of it, wherein most plainly, *ac per mandatum domini regis* hath no reference to any other cause whatsoever, but is as a single cause enumerated in the return by itself, as the record clearly sheweth. It is in *22 Hen. VIII. rot. 37.*

The third is of the same king's time, it is *35 Hen. VIII. rot. 33.* *John Bunck*'s case; he was committed by the lords of the council *pro suspitione felonie, ac pro aliis causis illis moventibus, qui committitur mariscallo, & immediate ex gratia curiae speciali traditur in ball'*. They committed him for suspicion of felony and other causes them thereunto moving, wherein there might be matter of state, or whatsoever else can be supposed, and plainly the cause of their commitment is not expressed; yet the court bailed him without having regard to these unknown causes that moved the lords of the council. But it has indeed some difference from either of those other two that precede, and from the other nine also that follow; for it is

agreed, that if a cause be expressed in the return, inasmuch that the court can know why he is committed, that then he may be bailed, but not if they know not the cause; now a man is committed for a cause expressed, & *pro aliis causis dominos de concilio moventibus*, certainly the court can no more know in such a case, what the cause is, than any other.

The fourth of these is in the time of queen Mary, it is *Pasch. 2. & 3. P. & Mar. rot. 58. Overton's case*. Richard Overton was returned upon a *habeas corpus*, directed to the sheriffs of London, to have been committed to them, and detained *per mandatum prænobilium dominorum honorabilis concilii dominorum regis & reginae, qui committitur marr' & immediate traditur in ball'*. In answer to this precedent, or by way of objection to the force of it, it hath been said, that this Overton at this time stood indicted of high treason. It is true, he was so indicted, but that appears in another roll, that hath no reference to the return, as the return hath no reference to that roll. Yet they that object this against the force of this precedent, say, that because he was indicted of treason, therefore though he were committed by the command of the lords of the council without cause shewed, yet he was bailable for the treason, and upon that was here bailed: Than which objection nothing is more contrary, either to law or common reason. It is most contrary to law, for that clearly every return is to be adjudged by the court out of the body of itself, and not by any other collateral or foreign record whatsoever; therefore the matter of indictment here, cannot in law be cause of bailing of the prisoner. And so it is averfe to all common reason, that if the objection be admitted, it must of necessity follow, that whosoever shall be committed by the king, or the privy council, without cause shewed, and be not indicted of treason or some other offence, may not be enlarged, by reason of supposition of matter of state: But that whosoever is so committed, and whith stands so indicted, though in another record may be enlarged, whatsoever the matter of state be for which he was committed. The absurdity of which assertion needs not a word for farther confutation, as if any of the gentlemen in the last judgment, ought to have been the sooner delivered, if he had been also indicted of treason; if so, traitors and felons have the highest privilege in personal liberty, and that above all other subjects of the kingdom.

The fifth of this kind is of queen Mary's time also, it is *Pasch. 4 & 5 P. Mar. rot. 45. the case of Edward Newport*. He was brought into the king's bench by *habeas corpus* out of the Tower of London, *cum causa, viz. Quod commissus fuit per mandatum concilii dominae reginae qui committitur marr' & immediate traditur in ballium*.

To this the like answer hath been made. As to that other case of Overton's next before cited, they say that in another roll of another term of the same year, it appears he was in question for

suspicion of coining, and it is true he was so; but the return and his commitment mentioned in it have no reference to any such offence, nor hath the bailment of him relation to any thing but to the absolute commitment by the privy council; so that the answer to the like objection made against Overton's case satisfies this also.

The sixth of these is of queen Elizabeth's time, *Micb. 9. El. rot. 35. the case of Thomas Lawrence*; this Lawrence came in by *habeas corpus*, returned by the sheriffs of London to be detained in prison *per mandat' concilii dominae reginae qui committitur marr. & super hoc traditur in ballium*.

An objection hath been invented against this also; it hath been said that this man was pardoned; and indeed it appears so in the margin of the roll, where the word *pardonatur* is entered; but clearly his enlargement by bail was upon the body of the return only, unto which that note of pardon in the margin of the roll hath no relation at all. And can any man think, that a man pardoned (for what offence soever it be) might not as well be committed for some *arcantum*, or matter of state, as one that is not pardoned, or out of his innocence wants no pardon?

The seventh of these is in the same year, and of Easter term following, it is *P. 9. El. rot. 63. Ro. Constable's case*. He was brought by *habeas corpus* out of the Tower; and in the return it appeared he was committed there, *per mandatum privati concilii dominae reginae qui committitur marr' & postea isto eodem ter' traditur in ball'*. The like objection hath been made to this, as that before of Lawrence, but the self same answer clearly satisfies for them both.

The eighth is of the same queen's time, in *Pasch. 20. El. rot. 72. John Browning's case*. This Browning came by *habeas corpus* out of the Tower, whither he had been committed, and was returned to have been committed, *per privat' concil' dominae reginae qui committitur marr' & postea isto eodem termino traditur in ball'*. To this it hath been said, that it was done at the chief justice Wray's chamber, and not in the court; and thus the authority of the precedent hath been lessened or slighted. If it had been done at his chamber, it would have proved at least this much, that Sir Christopher Wray, then chief justice of the king's bench, being a grave, learned, and upright judge, knowing the law to be so, did bail this Browning, and enlarge him, and even so far the precedent were of value enough; but it is plain, that though the *habeas corpus* were returnable, as indeed it appears in the record itself, at his chamber in Serjeants-Inn, yet he only committed him to the king's bench presently, and referred the consideration of enlarging him to the court, who afterward did it: For the record says, *& postea isto eodem termino traditur in ball'* which cannot be of an enlargement at the chief justices chamber.

The ninth of this first kind is *Hill. 40. El. rot. 62. Edward Harecourt's* case. He was imprisoned in the Gate-house, and that *per dominos de privato concilio domine regine pro certis causis eos moventibus & ei ignotis*; and, upon his *habeas corpus* was returned to be therefore only detained, *qui committitur marr'*; & *postea isto eodem termino traditur in ball'*. To this never any colour of answer hath been yet offered.

The tenth is *Catesbie's* case in the vacation after *Hill. term. 43. El. rot. Robert Catesbie* was committed to the Fleet *per warrantum diversor' praenobilium virorum de privato concilio domine reginae*: He was brought before justice Fenner, one of the then justices of the king's bench, by *habeas corpus* at *Winchester house, Southwark, & commiss. fuit marr' per presat' Edwardum Fenner & statim traditur in ball'*.

The eleventh is *Richard Beckwith's* case, which was in *Hil. 12. of king James, rot. 153*. He was returned upon his *habeas corpus* to have been committed to the gate-house by divers lords of the privy council, *qui committitur marr' & postea isto eodem termino traditur in ball'*.

To this it hath been said by some, that *Beckwith* was bailed upon a letter written by the lords of the council to that purpose to the judges; but it appears not that there was ever any letter written to them to that purpose; which though it had been, would have proved nothing against the authority of the record; for it was never heard of that judges were to be directed in point of law by letters from the lords of the council; although it cannot be doubted, but that by such letters, sometimes they have been moved to bail, men that would or did not ask their enlargement without such letters, as in some examples I shall shew your lordships among the precedents of the second kind.

The twelfth and last of these, is that of *Sir Thomas Mounson's* case, it is *Mich. 14. Jac. rot. 147*. He was committed to the Tower *per warrantum a diversis dominis de privato concilio domini regis locum tenenti directum*, and he was returned by the lieutenant to be therefore detained in prison, *qui committitur marr' & super hoc traditur in ball'*.

To this it hath been answered, that every body knows by common fame, that this gentleman was committed for suspicion of the death of *Sir Thomas Overbury*, and that he was therefore bailable. A most strange interpretation. As if the body of the return, and the warrant of the privy council, should be understood, and adjudged out of fame only. Was there not as much a fame why the gentlemen that were remanded in the last judgment were committed, and might not the self same reason have served to enlarge them, their offence (if any were) being I think much less than that for which this gentleman was suspected?

And thus I have faithfully opened the number of twelve precedents most express in the

very point in question, and cleared the objections that have been made against them.

And of such precedents of record as are of the first kind, which prove plainly the practice of former ages, and judgment of the court of king's bench, in the very point, on the behalf of the subject, my lords, hitherto.

I am come next to those of the second kind, or such as are pretended that persons so committed are not to be enlarged by the judges upon the *habeas corpus* brought, but to remain in prison still at the command of the king or the privy council.

These are of two natures; the first of these are, where some assent of the king or the privy council appears upon the enlargement of a prisoner so committed, as if that because such assent appears, the enlargement could not have been without such assent.

The second of this kind, are those which have been urged as express testimonies of the judges denying bail; and in such cases, I shall open these also to your lordships; which being done, it will most clearly appear, that there is nothing at all in any of these that makes any thing at all against the resolution of the house of commons touching this point; nay, it is so far from their making any thing against it, that some of them add good weight also to the proof of that resolution.

For those of the first nature of this second kind of precedents, they begun in the time of *Hen. VII. Thomas Brugge*, and divers others were imprisoned in the king's bench *ad mandatum dom' regis*; they never sought remedy by *habeas corpus*, or otherwise, for ought appears; but the roll says, that *dominus rex relaxavit mandatum*, and so they were bailed. But can any man think that this is an argument either in law or common reason, that therefore they could not have been bailed without such assent? It is common in cases of common persons, that one being in prison for surety of the peace or the like, at the suit of another, is bailed upon the release of the party plaintiff. Can it follow, that therefore he could not have been bailed without such release? Nothing is more plain than the contrary. It were the same thing to say, that if it appears, that if a plaintiff be non-suit, therefore unless he had been non-suit, he could not have been barred in the suit. The case last cited is, *Mich. 7 Hen. VII. rot. 6*.

The very like is in the same year, *Hill. 7. Hen. VII. rot. 13*, the case of *William Bartholomew, William Chafe*, and divers others; and the self same answer that is given to the other clears this.

So in the same year, *Pas. 7 Hen. VII. rot. 18*. *John Beaumont's* case is the same in substance with those other two, and the self same answer also satisfies, that clears them.

The next case is, *Mich. 12. Hen. VII. rot. 8*. *Thomas Tew's* case. He was committed *ac sec' pacis*, for the security of the peace, at the suit of one *Freeman*, and besides, *ad mandatum dom' regis*; and first, *Freeman relaxavit sec. pacis*,

pacis, and then Sir James Hubbard, the then king's attorney general *relaxavit mandatum dom' regis*, and hereupon he is bailed. The release of the king's attorney, no more proves that he could not have been enlarged without such release or assent, than that he could not have been bailed, without release of surety of the peace by *Freeman*.

The very like is in *Hill. 9 Hen. VII. rot. 14.* the case of *Humphrey Boch*; which proves no more here than the rest of this kind already cited.

Then for this point also *Broome's* case of queen *Elizabeth's* time, is *Trin. 39 El. rot. 128.* *Lawrence Broome* was committed to the *Gatehouse per mandatum dom' concilii dominae reginae*, and being returned so upon the *habeas corpus*, is first committed to the *Marshalsea* as the course is, and then bailed by the court. Which indeed is an express precedent, that might perhaps well have been added to the number of the first twelve, which so plainly shew the practice of enlarging prisoners in this case, by judgment of the court upon the *habeas corpus*. But it is true, that in the scrolls of that year, where the bails are entered, but not in the record of the *habeas corpus*, there was a note, that this *Broome* was bailed *per mandatum privati concilii*; but plainly this is not any kind of argument, that therefore in law he might not have been otherwise bailed.

The self same is to be said of another of this kind, in *Mich. 40 El. rot. 37.* *Wenden's* case. *Thomas Wenden* was committed to the *Gatehouse* by the queen and the lords of the council *pro certis causis* generally, he is brought by *habeas corpus* into the king's bench, and bailed by the court. But it is said, that in the scrolls of that year it appears, that his enlargement was *per consensum dom' privati concilii*; and it is true that the queen's attorney did tell the court, that the lords of the council did assent to it. Follows it therefore, that it could not have been without such assent?

Next is *Hill. 43 El. rot. 89.* when divers gentlemen of special quality were imprisoned by the command of the privy council; the queen being graciously pleased to enlarge them, sends a commandment to the judges of the king's bench, that they should take such a course, for the delivering of them upon bail, as they should think fit; and they did so, and enlarged them upon writs of *habeas corpus*. Follows it therefore, that this might not have been done by law, if the parties themselves had desired it?

So in *Trin. 1 Jac. rot. 30.* Sir *Jo. Brocket* being committed to the *Gatehouse*, is returned to stand committed *per mandatum privati concilii*, and he is enlarged *virtute warranti a concilio praediti*. But the same answer that satisfies for the rest before cited, serves for this also.

The last of these, is *Reynar's* case, in *Mich. 12 Jac. rot. 119.* He was committed to the *Gatehouse* by the lords of the council; and being brought into the king's bench by *habeas corpus*, is enlarged upon bail. But this they say

was upon a letter written from one of the lords of the council to the judges. It is true, that such a letter was written, but the answer to the former precedents of this nature, are sufficient to clear this also.

And in all these observe,

1. That it appears not, that the party ever desired to be enlarged by the court, or was denied it.

2. Letters either from the king or council, cannot alter the law in any case. So that hitherto, nothing hath been brought on the contrary part, that hath any force or colour of reason in it.

We come now my lords, to those precedents of the other nature, cited against the liberty of the subject; that is, such as have been used to mislike, that persons so committed may not be enlarged by the court.

They are in number eight; but there is not one of them that proves any such thing, as your lordships will plainly see upon opening them.

The first four of them, are exactly in the same words, saying that the names of the persons and the prisons differ; I shall therefore recite them all one after another, and then clear them together.

The first is *Richard Everard's* case, *Hill. 7 Hen. VII. rot. 18.* He and others were committed to the *Marshalsea* of the household *per mandatum dom' regis*, and so returned upon a *habeas corpus* into the king's bench; whereupon the entry is only *qui committitur marr' &c.*

The second is *Hill. 8 Hen. VII. Richard Cherry's* case. He was committed to the mayor of *Windsor*, *per mandatum dom' regis*, and so returned upon a *habeas corpus*, and the entry is only, *qui committitur marr' &c.*

The third is, *Hill. 9 Hen. VII. rot. 14. Christopher Burton's* case, who was committed to the *Marshalsea* of the household, *per mandatum dom' regis*, and so returned upon his *habeas corpus*, and the entry is likewise, *qui committitur marr' &c.*

The fourth is, *George Urswick's* case, *Pas. 19 Hen. VII. rot. 19.* He was committed to the sheriffs of *London per mandatum dom' regis*, and returned to upon his *habeas corpus*, *qui committitur marr' &c.*

These four have been used principally, as express precedents, to prove that a prisoner so committed, cannot be enlarged; and perhaps at the first sight, to men that know not, and observe not the course and entries of the court of king's bench, they may be apprehended to prove as much; but in truth they rather prove the contrary, at least there is no colour in them of any such matter as they have been used for. To which purpose I beseech your lordships to call to your memories, that which I first observed to you touching the course of that court. Where a prisoner is brought in by *habeas corpus*, he is (if he be not to be remanded) first committed to the marshal of the court, and then bailed as his case requires. This is so certain,

as it can never be otherwise. Now these men being thus committed by the express command of the king, are first you see taken from the prisons, whither they were first committed. Wherein you may observe, my lords, that if a general suspicion of matter of state were of force in such a case, it might be as needful in point of state, to have the prisoner remain in the prison where the king by such an absolute command committed him, as to have him at all committed. When they have taken them from the prisons where before they were, they commit them to the marshal of their own court, which is but the first step to bailing them. Now it appears not indeed that they were bailed, for then *traditur in ball'* had followed; but nothing at all appears that they were denied, perhaps they never asked it, perhaps they could not find such as were sufficient to bail them. And in truth, whenever any man is but removed from any prison in England (though it be for debt or trespass only) into that court, the entry is but in the self same syllables as in these four cases.

And in truth, if these proceedings did prove that any of the prisoners named in them, were not bailable, or had been thought by the court not to have been bailable, it will necessarily follow, that no man living that is ordinarily removed from any prison into the king's-bench, or that is there upon any ordinary action of debt, or action of trespass, could be bailed. For every man that is brought thither, and not remanded, and every man that is arrested, but for a debt or trespass, and was returned into that court, is likewise committed to the marshal of that court, and by the self same entry, and not otherwise. Yet these four have been much stood on, and have strangely misled the judgment of some that did not, or would not seem to understand the course of that court.

The fifth of this nature is, *Edward Page's* case; it is *Tr. 7 Hen. VIII.* This might have been well reckoned with the former four, had not the mis-entry of the clerk only made it vary from them. *Ed. Page* was committed to the *Marschal's* of the household, and that *per mandatum dom' regis*, and returned to be therefore detained, and the entry is, *qui committitur marr. hospitii dom' regis*. This word *marr'* is written in the margin of the roll. This hath been used to prove, that the judges remanded this prisoner; If they had done so, the remanding had been only while they advised, and not any such award which is given, when they adjudge him not bailable. But in truth, the word *committitur* shews, that there was not any remanding of him, nor doth that court ever commit any man to the *Marschal's* of the household; and besides the word *marr'* for *marscallo* in the margin, shews plainly that he was committed to the marshal of the king's-bench, and not remanded to the *Marschal's* of the household; For such entry of that word in the margin, is perpetually in cases of that nature, when they commit a man to their own prison, and so give him the first step to bailment, which he may have if he ask it, and can find bail; And doubt-

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less these words of *hospitii prae'* were added by the error of the clerk for want of distinction in his understanding, from the *marr'* of the king's-bench, to the marshal of the household.

The sixth of these is, *Tho. Caesar's* case, it is *8 Jac. rot. 99*. This *Caesar* was committed to the *Marschal's* of the household *per mandatum dom' regis*, and returned to be therefore detained, and indeed a *remittitur* is in the roll, but not a *remittitur quousque*, but only that kind of *remittitur* which is only used, while the court advises. And in truth, this is so far from proving any thing against the resolution of the house of commons, that it appears that the opinion of the reverend judges of that time was, that the return was insufficient, and that if it were not amended, the prisoner should be discharged. For in the book of rules in the court of *Mich. term* (when *Caesar's* case was in question) they expressly ordered, that if the steward's marshal did not amend their return, the prisoner should be absolutely discharged. The words of the rule are, *Nisi seneschallus & marschal' hospitii dom. regis sufficienter returnaverint breve de habeas corpus Thomae Caesar die Mercur' prox. post. quindenam scilicet Martini. def. exonerabitur*. And this is also the force of that precedent. But yet there hath been an interpretation upon this rule. It hath been said, that the judges gave this rule, because the truth was, that the return was false, and that it was well known, that the prisoner was not committed by the immediate command of the king, but by the command of the lord chamberlain, and thence (as it was said) they made this rule. But this kind of interpretation is the first that ever was supposed, that judges should take notice of the truth or falsehood of the return otherwise than the body of the return could inform them. And the rule itself speaks plainly of the sufficiency only, and not of the truth or falsehood of it.

The seventh of these is, the case of *James Desmairies*, *Edward Emerson*, and some others that were brewers, and were committed to the *Marschal's* of the household *per mandatum dom. regis*, and so returned upon *habeas corpus*; and it is true, that the roll shews that they were remanded, but the remanding, was only upon advice; and indeed the grave and upright judges of the time were so careful, least upon the entry of the remanding any such mistake might be, as might perhaps mislead posterity in so great a point, that they would expressly have this word (*immediate*) added to the *remittitur*, that so all men that should meet with the roll might see, that it was done for the present only, and not upon any debate of the question. And besides, that there is no *quousque* to it, which is usually added; when the highest award upon debate or resolution of this kind is given by them.

The eighth of these is the case of *Saltonstall*, it is *Hill. 12 Jac.* Sir *Samuel Saltonstall* was committed to the fleet, *per mandatum dom. regis*; and besides, by the court of chancery, for disobeying an order of that court, and is re-

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returned upon his *habeas corpus*, to be therefore detained. And it is true that a *remittitur* is entered in the roll, but it is only a *remittitur prisonee praedit'*, without *quousq; secundum legem deliberatus fuerit*; and in truth it appears on the record, that the court gave the warden of the *Fleet*, three several days at several times, to amend his return, and in the interim *remittitur prisonee praedit'*. Certainly if the court had thought that the return had been good, they would not have given so many several days to have amended it. For if that *mandatum dom. regis* had been sufficient in the case, why need it to have been amended?

The ninth and last of these is, *Tr. 13. Jac. rot. 71.* the case of the same Sir Samuel Saltonstall; He is returned by the warden of the *Fleet*, as in the case before, and generally *remittitur* is in the roll, which proves nothing at all, that therefore the court thought he might not by law be enlarged; and besides in both cases he stood committed also for disobeying an order in the chancery.

These are all that have been pretended to the contrary in this great point; and upon the view of them thus opened to your lordships, it is plain, that there is not one, not so much as one at all, that proveth any such thing, as that persons committed by the command of the king, or the lords of the council without cause shewed, might not be enlarged, but indeed the most of them expressly prove rather the contrary.

Now, my lords, having thus gone through the precedents of record, that concern the point of either side, before I come to the other kind of precedents, which are the solemn resolutions of judges in former times, I shall (as I am commanded also by the house of commons) represent unto your lordships somewhat else, they have thought very considerable, with which they met, whilst they were in a most careful enquiry of whatsoever concerned them in this great question.

It is, my lords, a draught of an entry of a judgment in that great case lately adjudged in the court of king's bench, when divers gentlemen imprisoned *per speciale mandatum dom. regis*, where by the award and order of the court, after solemn debate, sent back to prison, because it was expressly said, they could not in justice deliver them, though they prayed to be bailed. The case is famous, and well known to your lordships, therefore I need not further to mention it. As yet indeed there is no judgment entered upon the roll, but there is room enough for any kind of judgment to be entered. But my lords, there is a form of a judgment, a most unusual one; such a one as never was in any such case before (for indeed there was never before any case so adjudged) and thus drawn up by a chief clerk of that court (by direction of Mr. attorney-general) as the house was informed by the clerk, in which the reason of the judgment, and remanding of those gentlemen is expressed in such sort, as if it should be declared upon record for ever, that the laws were, that no man could ever be enlarged from imprison-

ment that stood committed by such an absolute command.

The draught is only in Sir John Heveningham's case, being one of the gentlemen that was remanded, and it is made for a form for all the rest. The words of it are, after the usual entry of a *curia advisare vult* for a time, that, *Visis retur' predict' necnon diversis antiquis recordis in curia hic remanent' consimiles casus continentibus, maturaq; deliberatione inde prius habita, eo quod nulla specialis causa captivonis sive detentionis pred' Johannis exprimitur, sed generaliter quod detentus est in prisone pred' per speciale mandatum dom. regis, ideo pred' Johannes remittitur presat' custodi marr. hospitii pred' salvo custodiend. quousq; &c.* that is, *quousq; secundum legem deliveratus fuerit*. And if that court, that is the highest for ordinary justice, cannot deliver him *secundum legem*; What law is there, I beseech you, my lords, that can be sought for in any other inferior court to deliver him? Now, my lords, because this draught, if it were entered in the roll, (as it was prepared for no other purpose) would be as great a declaration, contrary to the many acts of parliament already cited, contrary to all precedents of former times, and to all reason of law, to the utter subversion of the highest liberty and right belonging to every freeman of this kingdom; and for that especially also it supposes, that divers ancient records had been looked into by the court in like cases, by which records their judgments were directed; whereas in truth, there is not any one record at all extant, that with any colour (not so much indeed as with any colour) warrants the judgment, therefore the house of commons thought fit also, that I should with the rest that hath been said, shew this draught also to your lordships.

I come now to the other kind of precedents; that is, solemn resolutions of judges, which being not of record, remain only in authentick copies; but of this kind there is but one in this case, that is, the resolution of all the judges in the time of queen Elizabeth. It was in the 34 of her reign, when divers persons had been committed by absolute command, and delivered by the justices of the one bench or the other; whereupon it was desired, that the judges would declare in what cases persons committed by such command were to be enlarged, hath been variously cited, and variously apprehended.

The house of commons therefore desiring with all care, to inform themselves as fully of the truth of it, as possibly they might, got into their hands from a member of their house, a book of selected cases, collected by a reverend and learned chief justice of the common pleas, that was one of them that gave the resolution, which is entered at large in that book; I mean the lord chief justice Anderson; it is written in the book with his own hand, as the rest of the book is; and howsoever it hath been cited, and was cited in that great judgment upon the *habeas corpus* in the king's bench, as if it had been, that

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upon such commitments the judges might not bail the prisoners, yet it is most plain, that in the resolution itself no such thing is contained, but rather expressed the contrary: I shall better represent it to your lordships by reading it, than by opening it.

Then it was read here.

If this resolution doth resolve any thing, it doth indeed upon the enquiry resolve fully the contrary to that which hath been pretended, and enough for the maintenance of the antient and fundamental point of liberty of the person, to be regained by *habeas corpus*, when any is imprisoned. And I the rather thought it fit now to read it to your lordships, that it might be at large heard, because in the great judgment in the king's-bench, though it were cited at the bar, as against this point of personal liberty, as also at the bench, yet though every thing else

of record that was used, were at large read openly, this was not read either at bar or bench; for indeed if it had, every hearer would easily have known the force of it, to have been indeed contrary to the judgment.

My lords, having thus gone through the charge committed to me by the house of commons, and having thus mentioned to your lordships, and opened the many precedents of records, and that draught of the judgment in this like case, as also this resolution, I shall now (as I had leave and direction given me, lest your lordships should be put to much trouble and expence of time in finding or getting copies at large of those things which I have cited) offer also to your lordships authentick copies of them all, and so leave them, and whatsoever else I have said, to your lordships further consideration.

The true COPY of the PRECEDENTS of RECORD.

Inter record, dom. regis Caroli in thesaurorum recept. scaccarii sui sub custodia dom' thesaurar' & camerar' ibidem remanen. viz. Placita coram domino rege apud Westmonasterium de ter' Paschae anno regis Edwardi 3. post conquest' Angliae 18. inter alia sic continetur ut sequitur.

Rot. 33. adhuc de termino Paschae.

Dominus rex mandavit dilecto & fideli suo Roberto de Dalton constabular' turris suae London vel ejus locum tenenti salutem. Mandamus quod Johannem Bildeston capellan' quem vic. nostr. London ad mandatum nostrum apud pred. turrim vobis liberavit, ab eisdem recipiatis & in prisona nostra turris London pred. salvo custodir. fac' quousque aliud super hoc duxerimus demandand. Teste meipso apud turrim nostram London 30. die Martii anno regni nostri Angliae 16. regni vero nostri Francie 3. Et modo scit. in crast. ascen. dom. anno regis nunc 18. coram domino rege apud Westminst. venit Johannes de Wynwicke locum tenens pred'. constabular' & adduxit coram justiciis hic in cur. pred'. Johannem de Bildeston quem ille a prefat. vicecomit. virtute brevis pred'. recepit, &c. Et dicit quod ipse a domino rege habuit mandat. ducend. & liberand. corpus ipsius Johannis de Bildeston prefat. justiciar. hic. &c. Et questum est de pred. Johanne de Wynwicke si quam aliam detentionis prefat' Johannis de Bildeston habeat causam. Qui

dicat quod non nisi bre. pred. tantum. Et quia videtur cur. bre. pred. sufficiens non esse pred. Johan. de Bildeston prison. mar' regis hic retinen. &c. Idem Johannes dimittitur per manus Willielm. de Wakefield rectoris eccles. de Willingham Johannis de Wynwicke in com. Kanc. Johannis de Norton in com. Norff. Nicolai de Blandefford in com. Middl. & Rogeri de Bromley in com. Stafford, qui cum manecerunt habend. eum coram domino rege in octabis Sancti Trin. ubicunque, &c. viz. corpus pro corpore, &c. Ad quas octab. Sancte Trin. coram domino rege apud Westm. ven. pred. per manus pred. Et super hoc mandavit justiciis. suis hic quoddam bre. suum claus. in haec verba; Edwardus Dei gratia rex Angliae, & Franciae, & dominus Hiberniae, dilectis & fidelibus suis Willielmo Scot, & sociis suis justiciis ad placita coram nobis tenend. assignat' saltem. Cum nuper mandaverim dilecto & fideli nostro Roberto de Dalton constabular' Turris nostre London vel ejus locum teneat. quod Johannem de Bildeston capellanum capr. & detent. in prisona turris pred. per preceptum nostrum pro suspitione contrasfactionis magni sigilli nostri cum atrachiat. & aliis causis caption. & detentionem pred. tangen. salvo & secur' duci fac' coram nobis in crast. ascen. dom. ubicunque tunc fuisset in Anglia, prisonae mariscal. nostrae coram nobis liberand. in eadem quousque per quandam informatorem essemus plenius informat. custod. & rita inde informatione pred. ulterius praed' super hoc fieri fecerimus quod fore viderimus faciend. secundum legem, & consuetudinem regni nostri Anglie, nos in casu quod dictus informator non ven. coram nobis ad informand. nos plenius super premiss. volentes eidem Johanni ea de causa justiciis deferri in hac parte, vobis mandamus quod si pred' informator in quinden. Sancti Trin. prox. futur. vel

vel circa non venit super hoc plenius in formam. tunc advent. ejusdem informatoris minime expectat. eidem Johanni super hoc fieri fac. justie. complement. prout fore videritis faciend. secundum legem & consuetudinem regni nostri Anglie. Teste meipso apud Westmynst. 12 Maii anno regni nostri Anglie 18. regni vero nostri Franc. 5^{to}. Quo quidem bre. respect. fact. est proclamacio quod si quis dictum regem super premiss. informare vel erga ipsum Johannem prosequi voluerit, quod veniat. Et super hoc venit pred. W. de Wakefield, Nicholas de Wandsworth, Johannes Brynwyn, Johannes de Longham, Johannes de Norton, & Rogerus de Bromly omnes de com' Midd' & man' pred. Johannem de Bildeston habend. cum coram domino rege de die in diem usq; ad prefat' quinden. Sanct. Trin. ubicunq; &c. Ad quem diem anno 18. coram domino rege apud Westmynst. venit pred. Johannes de Bildeston per manus pred. & iterata facta est proclam. in forma qua superius, &c. Et nullus venit ad dictum regem informand', &c. per quod concess. est quod pred. Johannes de Bildeston car inde sine die salva semper actione dom. regis si qua, &c.

De term. sancti. Hill. anno 22 Hen. VIII. & per cont. rot. ejusdem rotul. 38.

Johannes Parker per Ricardum Choppin, & W. Daunsey vic' London virtute brevis dom. regis de latitat pro pace versus ipsum Johannem Parker ad fecit. Johannis Bruton eis inde direct' & coram rege duct. cum causa, vizt. Quod idem Johannes Parker capt. fuit in civitate pred.' pro secut' pacis pred. & pro suspitione felonie per ipsum apud Croweall in com. Glocest. perpetrat' per nomen Johannis Parker de Thornbury in com. Glocest. corser alias dict. Johannes Charls de eodem com' *surgeon* ac per mandatum dom. regis nunciat. per Robertum Pecke gen' de Clifford's Inn qui committit Marh' &c. Et postea iste eodem termino traditur in ballium Thomae Atkins de Thornbury pred. *weaver*, & Willi. Nole de eadem villa & com. usq; a die Pasche in unum men. *weaver* ubicunq; &c. Et quod idem Johannes Parker citra eundem diem personaliter comparuit coram iusticiari' dom. regis ad prox. general. gaol. deliberation' in com. Glocest. prox. tenend. ad subiiciend. & recipiend. ea omnia, & singula quoad prefat. iusticiari' de eo tunc ordinare contigerint, &c. vizt. corpus pro corpore, &c. Ad quem diem pred. Johannes Parker licet ipsi 4. placit. solemniter exact' ad comparand. non ven. ideo caperet eum pler' Trin. ad quem diem ex octab. Trin. postea Trin. 24 Hen. VIII. ex crast. quinden' Pasche. Ad quem diem bre. Et vic' return' quod ad Hust. tent. apud London die Lune prox' post fest. sancte Scholastice anno regis Hen. VIII. 25. Johannes Parker, & W. Nole utl' fuer. prout patet per bre. regis de ter' Pasche anno 25 reg. pred.

De term. sancti. Mich. anno 35 Hen. VIII. & per cont. ejusdem rot. 33.

Johannem Bincks per Ro. Baker ar. fenefchall. cur. marr' & Radum Hapton mar' ejusdem cur. virtute brevis dom. regis de habeas corpus ad subiiciend. & recipiend. &c. eis inde direct. coram domino rege duct' cum causa, vizt. Quod ante adventum brevis pred. Johannes Bincks captus fuit per mandatum privati consilii dom. regis pro suspitione felonie & pro aliis causis illos movent. & duc' ad gaol. marr' & ibidem detent' virtute gaol' pred. qui committitur mari' &c. Et immediate ex gra' cur. special' pred. Johannes Binckes de Magna Marlow in com. Buck. *weaver* traditur in ball. Thomae Bignam de London gent. & Johanni Woodward de Marlow pred. *taylor* usq; in crast. sanct. Martin. ubicunq; &c. utq; pleg. corpus pro corpore &c. Ad quem diem comparuit & Robertus Drury ar' & Johannes Bosse gen. domino iusticiari. dom. regis ad pacem in com. Buck. virtute brevis dom. regis eis direct. domino regi certificaverunt quod nullum indictamentum de aliquibus felonis & transg. verius ipsum Johannem Byncks coram eis ad presens resident'. Et ulterius de fama & gestu ipsius Johannis Byncks per sacrum proborum & legalium hominum com. Buck. diligentcr inquiri fecerunt, & nihil aliud praeter bonum de eo coram eis est compertum. Ideo concess. est quod pred. Jo. Byncks de premissis car inde sine die deliberatur per proclamationem & jur. prout moris est.

De term. Pas. anno 2 & 3 Ph. & Mar. rot. 58.

Ricardus Overton nuper de London gen. per Tho. Leigh, & Johannem Machell vic' London virtute brevis regis & reginae de habeas corpus ad stand. rect. &c. eis inde direct. coram Willielmo Portman mil' capital. iusticiari. &c. duct. cum causa, vizt. Quod pred. Ricardus Overton 9. die Octobr. ult. preter. commiss. fuit prison' de Newgate, & ibidem in eadem prisona sub custod. dict. vic. detent. ad mandatum prenobilitum duorum honorabilis consil. pred. regis & regine qui committit. marr' &c. Et immediate traditur in ball. Willielmo Overton de London gen. & Johanni Tayler de parochia Sancti Martini apud Ludgate London merc. usq; octab. Trin. vizt. uterq; manucaptor pred. corpus pro corpore, & postea Tr. 2. Fl. regine, corpus Overton & pleg. suos octabis Michael. Ad quem diem ex mens. Pasch. Ad quem diem vic. ret. quod ad Hust. suum tent. Guild-hall civitatis London die Lune post festum Sancti Gregor. epi. pred. W. Overton utl' est & per bre. Pal. anno suprad.

De term. Sancti. Mich. anno 2 & 3 Ph. & Mar. rot. 16. habet chart. allocat. Trin. 2 & 3 Phil. & Mar.

Ricardus Overton nuper de Lond. gen. capt. octab. Hill. pro quibusdam alis prodic. unde indictat' est, ad quem diem Pasch. ad quem diem ex cr. animarum.

De

De termino Pasche 4 & 5 P. & Mar. & per cont. ejusdem rot. 45.

Edwardus Newport gen. per Robertum Oxenbridg mil' constabular. turris pred. virtute bre. dominor. regis & regine de habeas corpus ad subjiciend. &c. ei inde direct. ad barr. coram domino rege & regina duct. cum causa, viz. Quod ipse sibi commiss. fuit per mandat. concil. dominae reginae qui committitur marr. & immediate traditur in ball. prout. &c. Et postea sine die per proclamationem virtute brevis de gestu & fama prout, &c. rot. 17. ejusdem anni.

De term. Mich. an 4 & 5 P. & Mar. per cont. ejusdem rotul. 17.

Mem. quod 14 die Octob. anno 4 & 5 P. & M. Edwardus Newport de Hanley in com. Wigorn. ac capt. fuit per Uxbridge in com. pred. pro suspitione contrafactionis quarundam pec. auri vocat. *French crownes* per ipsum & alibi in com. Wigor. fieri supposit. & ea de causa per mandat. concil. dom. regis & regine commiss. ad barr. tunc duct. fuit qui committitur marr. &c. Et super hoc idem Edwardus Newport traditur in ball. Thomae Charge de Latton in com. Essex gener. Edwardo Hales de parochia sancti Olavi London. gen. Johanni Baker clerico ordinari. London, Johanni Gill de parochia sancti Tho. Apostoli London, clothworker, & Ricardo Parkes de Brownelgrave in com. Wigorn. yeoman usq; octabis Hill. ubicunq; &c. viz. quilibet. pleg. proced. sub paena 100 l. & pred. Edwardus sub paena 200 l. quas, &c. Ad quem diem comparuit & committitur constabular. Turris London per mandatum concil. dom. regis & regine ibid. salvo custodiend. quousq; &c. Et postea Pas. 4 & 5 P. & M. traditur in ball. prout patet per scrivect. finium istius ter. & postea M. 5 & 6 P. & M. exonerat. per cur. eo quod tam per sacrament. 12. probor. & legalium hominum de pred. com. Midd. coram dom. rege, & domina regina hic in cur. in ea parte jurat. & onerat. quam per sacrament. 12. probor. legal. homin. de pred. com. Wigor. coram Edwardo Saunders, & Johanne Whid. mil. & aliis iusticiar. dictor. dom. regis & regine ad pacem hac de diversis felonis transgress. & aliis malefact. in eodem com. perpetrat. audiend. & terminand. assignat. virtute brevis dictor. dominor. regis & regine eis inde direct. in ea parte jurat. & onerat. ad inquirendum de gestu & fama ipsius Edwardi compert' existit quod idem Edwardus est de bonis gestu & fama ideo proclamatio est inde facta prout moris est secund. legem & consuetudinem reg. Anglie, &c. concess. est quod pred. Edwardus eat inde suae die.

De term. Pas. 9 El. rot. 35.

Tho. Lawrence per Christopher. Drap. majorem civitatis London Ambrosium Nicholas & Ricu. Lambert vic. ejusdem civitatis virtute brevis dom. regine de habeas corpus, &c. ad subjiciend. &c. eis inde direct. & coram dom. regina dict. cum causa, viz. Quod 7 die Novem. anno regni dom. El. nunc regine Anglie 8. pred.

V O L. III.

Thomas Lawrence in dicto brevi nominat. cap. tus fuit in civitate pred. & in prisona dom. regine, sub custod. pred. coram vic. detent. per mandatum concil. dom. regine qui committitur mar. &c. & super hoc tradit. in ball. prout patet per scrivect. finium istius ter.

De term. Pasch. 9 El. rot. 63.

Robertus Constable ar. per Franciscum Jobson mil. locum tenent. turris London virtute brevis dom. regine de habeas corpus ei inde direct. & coram domina regina dict. cum causa viz. Quod idem Robertus Constable prefato Francisco Jobson commissus fuit per mandatum privat. concil. dom. regine salvo custodiend. Qui committitur marr. &c. Et postea isto eodem ter. traditur in ball. prout patet inter scrivect. finium istius ter.

Term. Pas. anno 20 El. & per cont. ejusdem rot. 72.

Johannes Browning per Owen Hopton mil. locum tenent. turris domine regine London virtute brevis habeas corpus ad subjiciend. ei inde direct. & coram dilecto & fidei Ch'ro Wray mil. capt. iusticiar. dom. regine ad placita coram nobis tenead. assignat. apud hospitium suum in Serjeant's Inn, Fleet-street, London, die Lune viz. 12. die Maii duct. cum causa viz. Quod pred. Johannes Browning commissus fuit eidem locum tenent. per mandatum privati concil. regine salvo custodiend. &c. Qui com. mar. &c. & postea isto eodem ter. traditur in ball. prout pat. per scrivect. finium istius ter.

De term. sancti Hill. anno 40 El. regine & per cont. ejusdem rot. 62.

Edwardus Harecort per Hugonem Parlour custod. prisona domine regine de Gate-house infra civitatem Westminst. in com. Middl. virtute brevis domine regine de habeas corpus ad subjiciend. &c. ei inde direct. & coram domina regina apud Westminst. dicta cum causa, viz. Quod ante advent. brevis pred. scil. 7. die Octo. an. regni dom. regine nunc 39. corpus Edwardi Harecort per duos privat. concil. dicta domine regine ei commiss. fuit salvo & secur. custodiend. certis de causis ipsos movent. & ei ignotis qui committitur marr. &c. Et postea isto eodem ter. traditur in ball. prout patet per scrivect. finium istius termini.

De vacatione Hillar. anno 43 El.

Robertus Catesbie per Johannem Phillips guardian. de le Fleete virtute brevis domine regine de habeas corpus ad subjiciend. &c. ei inde direct. & coram Edwardo Fennor uno iusticiar. domine regine ad placita coram ipsa regina tenead. assignat. apud Winchester-house in burgo de Southwarke in com. Surr. dict. cum causa, viz. Quod pred. Robertus commissus fuit prisona pred. primo die Marcii anno 43 El. warr. diversorum prenobiliu virorum de privato concilio domine regine in hec verba, *To the warden of the*

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the Fleet, or his deputy. These shall be to will and require you, to receive at the hands of the keeper of the Compter of Wood-street, the person of Robert Catesbie, Esq; and him to detain and keep safely in that prison under your charge, until you shall have other direction to the contrary, whereof this shall be your warrant. Et præfat. Robertus commissus fuit marr. per præfat. Edwardum Fenner, & statim traditur in ball. prout patet, &c.

Term. Hill. anno 43. Eliz. regine 12. Jac. regis.

Ricardus Beckwith gen. per Aquilam Wykes custod. prisone de Gate-house in com. Midd. virtute brevis dom. regis de habeas corpus ad subjiciend. ei inde direct. & coram domino rege duct. cum causa viz. Quod ante advent. brevis predict. scilicet 10 die Julii anno regni dom. Jac. regis Dei gracia Anglie Franc. & Hibernie fidei defensor. &c. 11. & Scot. 47. predict. Ricardus Beckwith sibi commissus fuit prisone predict. sub custod. sua virtute ejusdam warrant. sibi fact. & direct. per Georgium divina providentia Cant. archiepiscopum totius Anglie primat. & metropolit. Henric. com. Northampton. & metropolit. Henric. com. Northampton dominum guardianum 5. portuum & un. de privato concil. regis Tho. com. Suffolk dom. camerar. regie familie ac sacr. consil. dom. regis Edwardum domin. Wooton gubernator. regis familie Johannem dom. Stanhoppe vice-camerar. regie familie cujus warrant. tenor. sequitur in hec verba. *To Aquila Wykes, keeper of the Gate-house in Westminster, or his deputy. Whereas it is thought meet that Milces Rayner, and Richard Beckwith, be restrained of their liberty, and committed to the prison of the Gate-house: These shall be to will and require you to receive the persons of the said Rayner and Beckwith into your charge and safe keeping in that prison, there to remain until you shall have further order from us in that behalf, for which this shall be your warrant.* Dated at White-hall the 10th of July, 1613. Et postea isto eodem termino.

De term. Mich. anno 14. Jac. per cont. ejusd. rot. 147.

Thomas Mounfon miles per Georgium More locum tenent. turris dom. regis London virtute brevis dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. coram domino rege apud Westm. duct. cum causa viz. Quod ante adventum brevis predict. predict. Thomas sibi commissus fuit per warrant. divers. domin. de privato concilio dom. regis sibi direct. &c. Qui committitur marr. &c. Et super hoc traditur in ball. prout patet per scrip. fin. istius termin.

De term. Mich. 7. H. VII. & per cont. ejusdem rot. 6.

Tho. Brugg jun. nuper de Yanington in com. Hereford gen. Johannes Raulcus nuper de Lemster in com. predict. ycoman, Robertus Sherman nuper de Lemster in com. predict. Walter Thomas nuper de eadem in com.

predict. hosier Tho. Ballard nuper de eadem in eodem com. smith Cadwallader ap John Duy nuper de Kerry in marchia Wallie com. Salop. adjacen. gen. Reigald ap Breighnam, alias Sherman, nuper de Lemster in com. Hereford sherman, & Thomas Turner nuper de King-sland in com. Hereford couler, sunt in custod. marr. ad mandatum dom. regis, &c. ac pro aliis certis de causis prout patet alibi de record. &c. per record. istius ter. postea isto termin. dominus relaxavit in mandatum suum & profecut. predict. comparuerint per attorn. &c. Et quod utlag. versus præfat. Thomam Brugg revocatur isto termino & predict. Johannes Raulcus pro felon. & murthero predict. traditur in ball. prout patet alibi, &c. ideo hic marr. de ejus corpore per cur. exoneratur, &c.

Term. Hillar. 7. Hen. VII. & per cont. ejusdem rot. 18.

W. Bartholomew Johannes Bartholomew Willielmus Chace Henr. Carr Tho. Rotfley Tho. Street Robertus Feldone & Henr. Banks sunt in custod. marr. ad cust. mandat. dom. regis, &c. per record. istius termin. ac predict. Willielmus Chace pro pace Randolpho Josselin invenicnd. &c. Pasche sequen. pet. postea termin. sequen. dictus dominus rex mandatum suum predict. quoad Willielm. Chace relaxavit per regis attornat. & pro pace & pro felon. & murthero traditur in ball.

De term. Pasch. 7. Hen. VII. & per cont. rot. ejusdem 18.

Johannes Beomond de Weddesbury in com. Staff. ar. est in custod. marr. ad mandatum dom. regis, &c. per record. istius ter. postea scilicet Trin' 7. Hen. VII. sequen. predict. Johannes Beomond de mandato predict. exoneratus existit ideo marr. de eo per eandem cur. exoneratus existit.

De term. Mich. anno 12. Hen. VII. rot. 8.

Thomas Yewe de villa de Staff. in com. Stafford ycoman, per Johannem Shawe & Ricardum Haddon vic. London virtute brevis dom. regis de habeas corpus, ad scd. ipsius regis eis inde direct. coram rege duct. cum causa quod idem Thomas Yewe attachatus fuit per Ricardum Whittington serjeant apud Baynard's castle civitatis predict. & prisona dicti dom. regis infra eandem civitatem salvo custodiend. causa pro suspitione felonie apud Coventric in com. Warr. perpetrat. ad suggestionem Willielmi King inholder. Ac insuper idem Tho. Yewe detinetur in prisona predict. virtute ejusdam alterius querel. versus ipsum ad sectam Johannis Freeman serjeant de eo quod inveniat. ei in sufficient. secur. pacis in dicta cur. coram Johanne Waiger nuper vic. Ac ulterius idem Tho. Yewe detentur. est in dicta prisona pro 23 l. debit. & 2 s. 8 d. dampnis & custag. quos Robertus Corbet mercer, ex cognicione ipsius defend. veritas eum recuperavit in eadem cur. coram eodem Johanne

Johanne. Waiger nuper vic. Ac etiam idem Tho. detinetur in dicta prifona ad mandatum domini regis per Johannem Shave alderman civitatis London, qui committitur marr. &c. Poſtea ſcilicet ter. ſanct. Trin. anno 19 regis H. VII. predict. Johannes Freeman relaxavit ſecur. pacis verſus eundem Tho. Yewe dictuſq; Robertus Corbet cognovit ſe fore ſatiſfact. de debito & dampnis predict. ac Jacobus Hubbard attornat. general. dom. regis relaxavit mandatum dom. regis ac pro ſuſpitione felonie predict. traditur in ball. Symon. Little de London taylor, & Johanni Aſh de London ſkinner uſq; oſtabis Mich. ubicunq; &c. Ad quem diem comparuit & Robertus Throgmorton miles unus cuſtod. pacis predict. com. Warr. return. quod null. indictament. de aliquibus felon. ſive tranſgreſſ. verſus præſat. Tho. Yewe coram eo & ſociis ad preſens reſidet. Et ulter. virtute brevis dom. regis ſibi & ſociis ſuis direct. per ſacrament. 12. probor. & legal. hominum de villa de Coventrie predict. de geſtu & fama predict. Thome diligenter inſpectionem fecerunt, & nihil de eo præter bonum coram eo & ſociis ſuis eſt compertum fuſ de bono geſtu, & fama. Ideo conceſſ. eſt quod predict. Tho. eat inde ſine die.

Term. Hillar. anno 9 Hen. VII. & per cont. ejusdem rot. 14.

Humfridus Broche nuper de Canterbrig in Cantabr. ſcholler per Robertum Willoughbie dom. Brooke mil. ſeneſcall. hoſpitii dom. regis ac Johannem Digbie mil. marr. cur. marr. hoſpitii predict. virtute cujuſdem brevis dom. regis de habeas corpus ad ſectam ipſius regis ad ſtand. rect. &c. ad ſect. partis utlag. eis inde direct. coram rege duct. cum cauſa viz. Quod idem Humfridus commiſſus fuit gaol. marr. hoſpitii dom. regis & hac de cauſa & non alia idem Humfridus in priſona pred. detinetur qui committitur marr. &c. poſtea Paſ. ſequen. rex relinquit mandatum ſuum capital. juſticiar. per Tho. Lovett mil. often. & pro utlag. pred. traditur in ball. prout patet alibi.

De term. ſanctæ Trinit. anno 39 El. & per cont. rot. ejusdem 113.

Lawrence Broome per Hugonem Parlour cuſtod. priſone domine regine de le Gate-houſe virtute brevis domine regine de habeas corpus ad ſubjiciend. &c. ei inde direct. & coram domina regina apud Weſtmiſt. duct. cum cauſa viz. Quod predict. Lawrence Broome in arcta cuſtod. ſua remanſit per mandatum duorum de concilio dicte domine regine pro certis cauſis eos movent. qui committitur mar. & poſtea iſte eodem termino traditur in ball. prout patet, &c.

Per ſerviet. ſm. term. ſanct. Trin. anno 39 El. regine.

Effex. ſ.

Lawrencius Broome de Parva Baddow in com. pred. husband. traditur in ball' ad ſubjiciend. &c. ad mandat. privat. concil. domine regine ſuper habeas corpus.

Verſus Rando. Mayall de Hatfield Beverell in com. pred. gener.

Verſus Henric. Odall de eadem gent.

Verſus Will. Eckkaſden de Weſtmiſt. brick-layer.

Verſus Rica. Morgan de Weſtmiſt. labourer.

Uterq; ſub pena 40 l. & princeps ſub pena 100 marcarum.

Pro ſuſpitione prodicionis cum Johanne Smith mil.

De term. ſanct. Michaelis anno 4 El. & per cont. rot. ejusdem rot. 37.

Tho. Wenden per Hugonem Parlour gen. cuſtod. priſone domine regine de le Gate-houſe virtute brevis domine regine de habeas corpus ad ſubjiciend. &c. ei inde direct. & coram domina regina apud Weſtm. duct. cum cauſa viz. Quod 18 die Junii anno regni dom. El. nunc regine Anglie 38 corpus &c. infra nominat. Tho. Wenden extra cur. ejusdem domine regine coram ipſa domina regin. privati conciliu dom. regis cujus tenor ſequitur in hec verba ſcilicet. *These are to will and require you to receive into your charge and custody, the person of John Brocket, knight, and him to retain in safe keeping under your charge, until you shall have farther order for his enlargement; whose commitments being for some special matter concerning the service of our sovereign lord the king, you may not fail to regard this warrant accordingly. From the king's palace at White-hall the last of March, 1605.* Eaſq; fuit cauſa detentionis pred. Johannis in priſona pred. qui committitur marr. &c. & poſtea traditur in ball. prout patet, &c.

Term. Mic. anno 12. Jac. regis rot. 119.

Milo Reyner per Aquilam Wykes cuſtod. priſone de le Gate-houſe, virtute brevis dom. regis de habeas corpus ad ſubjiciend. &c. coram domino rege duct. cum cauſa viz. Quod ante advent. brevis pred. ſcilt. 10 Julii, anno dom. 1613. pred. Milo Reyner commiſſus fuit priſon. pred. & huc uſq; detent. virtute warr. cujuſdam fact. & direct. per Georgium archiepiſcopum Cant. Henr. com. Northampton, Tho. com. Suffolk Willielm. dom. Knolles Edwardum dom. Wooton & Edwardum dom. Stanhope cujus warranti tenor ſequitur in hec verba. *To Aquila Wykes, keeper of the Gate-house in Westminster, or his deputy. Whereas it is thought meet, that Miles Reyner and Richard Beckwith be restrained of their liberty, and committed to the prison of the Gate-house. These shall be to will and require you, to receive the persons of Rayner and Beckwith into your charge and keeping, until you shall have farther order from us in that behalf, for which this shall be your sufficient warrant. Dated at White-hall the 10th of July, 1613.* Ex hæc eſt cauſa detentionis ſue in priſona pred. qui committitur marr' &c. Et poſtea iſto eodem ter' traditur in ball' prout patet, &c.

Ter.

Term. Hill. 5 H. VII. & per cont. ejusdem rot. 18.

Ricardus Everard nuper de Colchester in com. Essex clericus, & Robertus Wight nuper de Norwico smith, per Robertum Willoughbie mil. dom. de Brooke feneshall. hospicii dom. regis & Johannes Turberville mil. mar. hospicii pred. virtute brev. de habeas corpus ad sectam ipsius regis pro quibusdam prodicionibus, & felon. unde in dicto com. Essex indictat. sunt scis iude direct. coram domino rege duct. cum causa, viz. quod iidem Ricardus Everard & Robertus Wight commissi fuer. custod. marr. pred. per mandat. dom. regis qui committitur marr. &c.

Term. Hill. 8 Hen. VII. & per cont. ejusdem rot. 13.

Berk. ff.

Roger Cherrie nuper de Nova Windsor in com. pred. yeoman, alias dict. Rogerus Stearries nuper de cadem in eodem com. yeoman, per Johan. Baker majorem villae dom. regis de Nova Windsor in com. pred. virtute brevis dom. regis de habeas corpus ad sect. ipsius regis pro quibusdam felonis & transgr. unde in com. Midd. indictatus est sibi inde direct. coram domino rege duct. cum causa, viz. quod idem Roger. commissus fuit gaol. dom. regis infra vill. pred. per mandat. dom. regis qui committitur marr. &c.

Term. Hill. 9 H. VII. & per cont. ejusdem rot. 14.

Christophorus Burton nuper de Rochester in com. Cancei hackney-man, per Robertum Willoughbie dom. Brooke mil. feneshall. hospicii dom. regis, & Johannem Digbie mil. marr. cur. mar. hospicii pred. per mandatum dom. regis. Et haec est causa & non alia. Qui committitur marr. &c.

Term. Pasf. anno 19 Hen. VII. & per cont. ejusdem rot. 23.

Georgius Urneswicke de London, mercer, per Oliverum Wood locum tenen. prisonae dom. regis de le Fleet virtute brevis dom. regis de conservand. diem, &c. ei inde direct. coram rege duct. cum causa, viz. quod idem Georgius 13. Maii anno 19. regis commissus fuit prisonae del Fleet per mandatum ipsius dom. regis salvo custodiend. sub pena 40 l. qui committitur marr. &c.

Term. Trin. anno 8 H. VIII. per cont. ejusdem rot. 23.

Edwardus Page nuper de London gent. per Georgium com. Salopiae feneshall. hospiti dom. regis, & Henricum Shamburne, marr. cur. mar. hospiti pred. virtute brevis dom. regis de habeas corpus ad sect. ipsius regis ad conservand. diem, &c. eis inde direct. & coram rege duct. cum causa, viz. quod idem Edwardus captus & detentus in prisona regis marr. pred. per mandatum dom. regis ibidem salvo custodiend. &c. Qui committitur marr. hospiti dom. regis.

Term. Mich. anno 8 Jac. & per cont. ejusdem rot. 99.

Tho. Caesar per Tho. Vavifour mil. marr. hospiti dom. regis & marr. ejusdem hospiti dom. regis, virtute brevis domini regis de habeas corpus ad subjiciend. &c. ei inde direct. & coram rege apud Westminst. duct. cum causa, viz. Quod ante adventum brevis pred. scil. 18 Julii anno regni dicti dom. regis nunc Angliae, &c. 7. Tho. Caesar in brevi pred. nominat. captus fuit apud White-hall in com. Middl. per speciale mandatum dom. regis ac per eundem regem ad tunc & ibidem commissi fuit prison. marr. ibidem salvo custodiend. quousq; &c. Et ea fuit causa captionis & detentionis ejusdem Tho. Caesar qui comittitur prisonae marr. pred.

Term. sancti. Mich. 8 Jac. regis.

Nisi pred. feneshall. & marr. hospiti dom. regis sufficienter return. bre. de habeas corpus Tho. Caesar die Mercur. per quinden. sancti Martini defendens exonerabitur.

Ter. Hill. 12 Jac. rot. 153.

Jacobus Demaistres Edwardus Emerton Georgius Brookehall & W. Stephens per Tho. Vavilour mil. marr. marr. hospiti regis virtute bre. dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. coram domino rege apud Westminst. duct. cum causa, viz. Quod ante adventum brevis pred. scil. 22. Januar. anno regis Jacobi Angliae, &c. 12. & Scot. 48. pred. Jacobus Demaistres Edwardus Emerton Gregorius Brookehall & W. Stephens in brevi huic schedul. annex. nominat. commissi fuer. gaol. marr. hospiti dom. regis pro causis ipsum regem & servic. suum tangen. & concernen. Et haec est causa captionis pred. Jacobi Edwardi Georgij & Willielmi, & postea immediate remittitur praefat. marr. hospiti pred.

Term. Hill. 12 Jac. regis.

Samuel Saltonstall miles per Johannem Wilkinton ar. guard. de le Fleet virtute brevis dom. regis de habeas corpus ad subjiciend. &c. ei inde direct. & coram domino rege apud Westminst. duct. cum causa viz. Quod. pred. Samuel commissi fuit prisonae pred. 11 Martii 1608. per warrant. a dominis de privato concilio dom. regis & quod detentus fuit etiam idem Samuel in prisona pred. virtute ejusdem ordinis in cur. canc. dom. regis fact. cujus ordinis tenor patet per rot. record. istius termini ad quem diem pred. Samuel remittitur prisonae pred. Et secundus dies prox. ter. datus est guardian. prisonae pred. ad emendand. return. suum sufficien. super pred. bre. de habeas corpus, & quod tunc intulerit hic in cur. corpus pred. Samuel Saltonstall mil. Ad quem quidem diem praefat. guardian. prisonae pred. super pred. bre. de habeas corpus retorn. quod pred. Samuel commissus fuit prisonae pred. 11 die Martii 1608. per warrant. a dom.

dom. de privat. concil. dicti dom. regis apud White-hall tunc seden. & quod postea 11 die Febr. 1610. commiss. fuit extra cur. canc. dom. regis apud Westminster. pro contemptu suo eidem cur. illat. Et quod detent. fuit etiam idem Samuel in prisona pred. per mandat. dom. cancellar. Angliæ. Super quo pred. Samuel iterum remittitur prisone pred. & ulterius dies dat est prefat. guardian ad emendand. return. suum super habeas corpus ver. defend. prout stare voluit usq; diem Jovis prox. mens. Pasch. & tunc ad habend. corpus, &c. Ad quem diem prefat. guardian. intulit corpus hic in cur. & return. super habeas corpus quod pred. Samuel commiss. fuit prisone pred. 11 die Martii 1628. virtute ejusdem warranti a dominis de privato concil. dom. regis tunc seden. apud White hall, & quod etiam idem Sam. commiss. fuit prisone 11 Febr. anno regis Jac. 18. per cur. canc. dom. regis apud Westminster. tunc existen. pro quodam contempt. per eundem Samuel eidem cur. illat. & perpetrat. proinde salvo custodiend. qui remittitur prisone pred.

Term. Tr. anno 13 Jac: & per cont. ejusdem rot. 17.

Samuel Saltonstall miles per Johannem Wilkinton guardian. prisone de le Fleet virtute brevis dom. regis de habeas corpus ad subjiciend. & recipiend. &c. ei inde direct. & coram dom. rege apud Westminster. duct. cum cautela viz. Quod pred. Samuel Saltonstall commissus fuit prisone pred. 12 die Martii anno regis Jacob. Angliæ &c. sexto, virtute ejusdem warrant. a dominis de privat. concilio dom. regis tunc seden. apud White-hall. Commissus fuit etiam idem Samuel Saltonstall miles prisone pred. 12 die Febr. anno 1610. & anno reg. Jac. Angliæ &c. 8. per considerat. cur. cancell. dicti dom. regis apud Westminster. pro contempt. eidem cur. adtrunc per pred. Samuel illat. ibidem proinde salvo custodiend. Et hæc sunt causæ captionis & detentionis pred. Sam. Saltonstall mil. in prisona, pred. cujus tamen corpus ad diem & locum infra content. parat. habeo prout mihi precipitur.

At the committee about the commission for martial law.

April 15. 1628.

THE question ariseth out of the commission read the other day. It was moved whether in former times this commission was used or no. Perhaps it was, but never was it used or executed in time of peace. We must be tender to question power. The power now spoken of is, that *suprema potestas vitæ & mortis*, and without all question, that power is in the king. But the question is of the way and manner of this power, which is debated every day in every court in *Westminster*. When it is questioned, if the commissioners of *oyer and terminer* do pursue their commission, it is not thereby questioned whether power be in the king. So now in debating of this commission we touch not on the regal dignity of the crown.

VOL. III.

We all admit it, and I shall humbly move that the soldiers hear, that here we speak, as a lawyer, against those commissions. Let them not condemn me or the law, the cause concerns them, and their lives and liberties, as much as ourselves. And to the whole house my suit is, though I shall tell you of former times, yet those demonstrate the present occasions better. First, Let us consider the general nature of martial law, and how this law is in *England*. If the question were, where the law of *England* is, we must say what is done in the courts of *Westminster*. Thus here, if we would know this law, see what is done in the marshal's court. In *England*, we have the common law, and martial law, all in due time and place. As the canon and civil law we have from *Rome*, and out of the empire, so is this martial law out of the law of the empire. In the titles of the civil law, they have titles *de re militari*. Those laws are at the pleasure of the emperor, or general of the army, and there are no certain *leges militares*. As in the empire they had *leges militares*, so have we our martial law, which is according to the pleasure of the kings of *England*. At divers times, divers laws. Some particular laws are by custom, and have been usually here before the marshal and constable, and that truly and properly is the martial law. Of late there were divers commissioners who had commission to exercise martial law that were no soldiers or lawyers. In ancient time all martial law belonged to the constable and marshal's court, and what cannot be done there, cannot be done now by any commission for martial law. In ancient time the constable and marshal held a court, in which all matters that belonged to war abroad and at home, were there determined; but they were such as could not be determined by the common law. They had a jurisdiction for war at home and abroad, and in time of peace they had a jurisdiction; but no person could be subject to their jurisdiction, but in time of war. As for the jurisdiction of the constable or marshal, or their court, it is plain for war abroad out of the land, and if any treason or murder, or other offence be done in the army abroad, the constable's court tried it here. 13 *Rich II. cap. 2*. They have consueance of deeds of arms out of the realm in general, and for war at home within the realm, of such deeds as cannot be determined by the common law. In ancient time, in the king's army, there was a marshal and a constable that ever went with them. Also for war at home in chasing rebels, they did execute men with the sword, but it was *flagrante crimine*, and that is the legal power of the lieutenants. Now if an army be to be led into *Scotland*, or other parts, martial law was never executed. If there be a deficiency in the law herein, let us proceed to make a law to help it. We have few records that testify any thing touching this martial law. 24 *Ed. I*. There be divers rolls touching the army that went into *Scotland*. It was then in *Northumberland*. After divers pleas were held at *Edinburgh*; but in all these pleas there is no proceed-

proceeding but according to the common law. The process is by attachment, and the trial by juries. In an army marching, no man can be executed, nor lose his life by martial law, but according to the common law. For time of peace, let us consider the nature of the things questionable. In the constable and marshal's court, without all question, they have power to hold consufance of all murders and offences done beyond sea. 1 *Hen. IV. cap. 14.* If murder be done beyond sea, there may be an appeal in the marshal's court, and so for treason. Since that statute there was an offer of an appeal for treason in the marshal's court. 7 *Hen. IV.* There was a charge against the earl of Northumberland for things done abroad: The parliament sent for the record, and heard the cause (for the parliament may proceed according to the proceedings of any court) and they adjudged him to death. As for things done at home in the kingdom, they may also in the marshal's court proceed against enemies, and not rebels. In former times, in *Hen. VII. Warbeck* was taken as an enemy, and he was tried by the marshal law, and a commission was granted to exercise the power of the marshal and constable, 15 *Hen. VII.* it is cited in *Calvin's* case. But whether may martial law be executed on any other persons? Without question it cannot. As for *tempus pacis*. The sitting of the courts in *Westminster-hall* is a badge of peace; tho' in other parts of *England* there be war, yet that is a great sign and character of peace. What place soever in *England* is free from the injuries of an army, if the sheriff in the county may execute the king's writs, there it is *tempus pacis*, though in other parts there be war. We often in our books find mention of *tempus pacis*, as esplices are laid *tempore pacis*. *Bracton, lib. 4. tract. de assis. ultim. present. c. 3. 240. b.* speaking of an assize *sur presentment*, says; *Item (tempore pacis) quod dicitur ad differentiam eorum quae sunt tempore belli, quod nihil differt a tempore injuria.* But if the sheriff may execute writs, then it is *tempus pacis*. *Sed omne tempus potest esse tempus guer-rinum, & possit esse tempus pacificum: non autem simpliciter, sed ad quosdam & non ad omnes.* Thus that live, where war is not, to them it is *tempus pacis*; and to those where war is, it is *tempus belli*. 13 *Rich. II. cap. 2.* The marshal hath power of things which the common law cannot understand, as prisoners brought from beyond sea hither. 1 *HIV. c. 14.* They have a jurisdiction by way of appeal, for things done beyond sea; but of other things, saving of one that is an enemy, they can do nothing. The nature of the marshal's court is exact according to the civil law: No other court doth the like. Can there be a commission to determine life and death according to the civil law? *Hen. IV.* being indulgent to the university of *Oxford*, gave them a charter to proceed according to the civil law, and accordingly they did proceed. 8 *Hen. IV. rot. 72. coram rege*; It was adjudged a void charter, and the judgment given by them

by that charter was reversed. 9 *H. IV. c. 1.* There is a confirmation of *magna charta*, and of all charters, except the charter made to *Oxford*. We have divers laws, as canon law, civil law, &c. and these are *leges terrae*, in our sense; that is, such as by the law of the land are in force; but in acts of parliament they are not meant, but only the common law. *Magna chart. c. 29. Nullus liber destruetur nisi per legem terrae & judicium parium suorum*; but by the commission for martial law, the trial of the law is taken away, 5 *Ed. III. c. 9.* None shall be adjudged of life and limb, but *per legem terrae*. 28 *Ed. III. c. 3. Nul home d'aucun condicion ferra mise al mort sauns due process del ley.* 8 *Rich. II.* A bill passed both houses (whatever petition is there on record, it must pass both houses, and it was all one with our bills now that pass both houses) that all pleas and quarrels ought to be determined according to the common law. 2 *Hen. IV. n. 79. rot. parl.* The constable and marshal began to enlarge their jurisdiction; the commons found themselves grieved, and a bill passed both houses, and recited the statutes of *Rich. II.* that whereas none of the king's lieges be put to answer for that that is done in the realm, but before the king's judges, and therefore nothing should be tried before the constable and the marshal, &c. 1 *Ed. III.* The earl of *Lancaster's* case is plain to this purpose. In 15 *Ed. II.* the earl of *Lancaster* was in rebellion, and was taken *flagrante crimine* in that rebellion, and brought before the king and divers great lords, and he was adjudged to death; and 1 *Ed. III.* his son earl of *Lancaster*, brought a writ of error, and assigned the error, because it was done *tempore pacis*, and the record saith, *Quicumque homo ligens felon &c. captus per legem terrae arrainari debet & praediti comes suis homo ligens, & fuit tempus pacis, & per tempus praediti cancellar' & cur' dom' regis apert' fuer' & justicia fieri potuit cuicumq' &c.* and also because not judged *per judicium parium suorum*, therefore it was reversed. *Passch. 39. Edw. III. rot. 92.* it is there recited at large. 20 *Rich. II.* Sir *Thomas Haxey* exhibited a bill in parliament, and was called in question before the lords for it; the lords arraigned him, and adjudged him to die by martial law; and 1 *Hen. IV.* he exhibited a petition that his judgment was against the law; and the commons finding themselves grieved that any commoner should be questioned for life contrary to the law, they put up a bill, which passed both houses to reverse that judgment, 1 *Hen. IV. n. 91. & 105.* I shall tell you what I read in a story in *Mr. Camden's* annals of queen *Elizabeth*, it is 242, 243. In 13 *Eliz.* there was one *Burchet* had got up strange fantastical opinions, and that it was lawful for him to kill all that held not his opinions; and being in company with captain *Hawkins*, stabbed him because he was not of his opinion. The queen being much moved at it, commanded he should be hanged by martial law; and it was resolved he could not be executed by martial law, but in time of war; but she did not

desist

desist, donec a prudentibus fuisset edocta, jus illud non nisi in castris, aut temporibus turbulentis adhibendum. Camden was a herald then, and knew well that passage. *Object.* There were commissions in Hen. VII. and other times, giving them power to proceed according to the martial law. *Ans.* In 12 Hen. VII. and 15 Hen. VII. such commissions were made, but never executed. And where it is said, that it was *secundum legem, & consuetudinem usitatam eorum marescalci*. &c. such commissions were got, but no man put to death till they had heard from the king, and had better authority. As for soldiers. Admit other men are not subject, yet whether are soldiers in time of peace? They are not. The earl of Lancaster was a soldier, and upon him martial law could not be executed. In those times there were no gentlemen but what were soldiers. Admit there were a jurisdiction in those that have the commission, yet whether are soldiers under the jurisdiction of the common law? Many statutes were made against soldiers that departed the king's service, and they were put to death, and so it was adjudged 43 Eliz. What needed that if it might be done by martial law? In the statute of *Regland* (it was about Rich. II.) there is a clause for the power of justices of eyer, to take care of soldiers that observed not their covenants. The form of the protection was, *quia profectus in exercitu*; he is protected by this for a year, but after that year he is subject to the law. Consider the times when all gentlemen were soldiers, if they were then exempted from the common law, what justice could be done?

April 19. 1628.

SOME speak of necessity, some of discretion and convenience. Somewhat should be done. Let us determine and settle what the law is, wherein there is some difference amongst us. One civilian differed from us, not as a lawyer, but as a statesman; a soldier, said he, is subject to the common law, and to martial law for conveniency. By the civil law a soldier is to be ruled only by the martial law, and not by the civil or common law. We have a new law, the law of state. But sure, law of merchants; &c. is a law of the land, and they are all known laws, and allowed by custom or by act of parliament. Can any tell me what this martial law is, and how to punish them according to this commission only? It hath reference to instructions by the council; and it was never known in *England*, that any law was made, but by custom or by act of parliament. At *Rome*, and now in the *Low-Countries*, their martial instructions are made by them that have the same power with our parliaments. As for our definition of time of war, it was said by one, that it is from the preparation to war. Why then war is peace, because it is a preparation to peace, and peace to war. It was said, that in former times, all men of fashion were soldiers; and if they were subject to this martial law;

where was the common law? As for the martial law to be exercised upon the marching of an army, it may be done by a commission of eyer and terminer, and so it has been done in former times. In the time of *Ed. I.* there are *placita exercitus*: But as now the king about his court hath the knight marshal, there all pleas be tried according to the common law. An ancient book was produced, in which it was ordained, that when there was a battel, then there must be a marshal and a constable, and they ought to hold court. As for the great case of *Thomas earl of Lancaster*, it doth appear by the record itself, that he was called to answer for himself, only he was not tried by the common law. *P. 15 Ed. II. rot. 69.* he was *ductus coram rege & recordat* of his rebellions, *quae quidem manifeste notorioe sunt.* In 1 *Ed. III.* the error assigned was, that he was condemned, *sed non secundum legem terrae.*

April 22. 1628.

I Hoped we had been nearer an end than we are. We have heard much spoken with great judgment. It was said, that there be several laws, ecclesiastical law, mariners law, &c. and therefore martial law. It is true, but yet all that law you can name, clearly is ascertained by custom, or established by act of parliament. It is true, there is a martial law in *England*. If an army were gathered together against an enemy, martial law might be used, which is known to the common law, and it is incorporated in the common law. All persons of the army are bound to obey, and whoever are rebels or disobedient, were to be punished *per incarcerationem corporis*; and that kind of commission is confirmed by act of parliament, 5 Hen. IV.

April 25. 1628.

T OUCHING the commissions for martial law, search was made, and from the time of *Ed. I.* to *Ed. IV.* they were committed to my charge; and I find some commissions to raise and levy men. Some are for jurisdiction, and are of several natures; some are to hear and determine *secundum legem terrae*; some are *ad gubernandum* generally; some *ad gubernandum secundum discretionem vestram*; some to punish *per arrestationem corporis*. One distinction I must give: It is most certain at this day, when martial law is to be executed, it is done legally *per viam judicii* in the marshal's court; or *per viam executionis*, which is only in an army in the chase of rebels or enemies. In fight they may be slain. And this jurisdiction is and must be in every army, and it is all the power of lieutenants now *ad debellandum & suppeditandum.* 27 *Ed. I. pat. rot. mem. 41. in dors.* A commission to the lord *Clifford*, who was lieutenant; he had power to array and draw an army together to defend the realm against the *Scots*, and had power to punish all that did not obey; and if they were disobedient, or rebels in *exercitu*, to punish as if the king were present; and a command to all sheriffs

to

to assist him with power. Three years before that are the *placita exercitus*, which were according to the laws in the steward and marshal's court. Now the power given by that commission is as if the king were present, which refers to the marshal's court. 1 *Edw. II. rot. Scot. mem. 24.* Gilbert earl of Clare was *capitaneus Scotie*, and there was a command to all to obey him, and to the sheriff, &c. & *damus potestatem ad puniendum omnes inobedientes, & prout ei videretur faciendum*; which is all one with *secundum leges Angl.* as is resolved in the commission. 8 *Ed. II. rot. Scot. mem. 6.* Upon a rebellion in Scotland, *Ralf. est capitaneus & custos castri, &c. & habet plenam potestatem ad puniendum qualitat' delicti prout ei videtur*; and a command to the sheriff to assist him. 18 *Edw. II. pat. par. 1. mem. 35.* A commission to *Daubury and Stapleton*. They were justices to hear and determine all offences within the army, *secundum leges & consuetudines Angl.* That commission was dated 11 *July*; and *July*, the same year, there is a commission in the same roll to the same parties, together with the bishop of *Exeter*, *ad audiendum terminandum & debite puniendum* and no more. In the time of *Ed. III. 1 Ed. III. rot. Scot. mem. 4.* A commission to *Henry earl of Lancaster*, *damus plenam potestatem querelas audiendum & iusticiam facere secundum consuetudines in exercitu usitat' faciendum*. This army was to be in the marches of Scotland, which place ever had another law than the law of England. And in queen *Elizabeth's* time, when an army went thither they had like commission, and they were *secundum consuetudinem marchiarum*. 10 *Ed. III. mem. 4. rot. Scot.* *Henry earl of Lancaster* was *capitaneus Scotie*, and had power, *omnes transgressi & felon' omnes per homines exercitus illius facti debite puniendi secundum leges exercitus in partibus illis*. 11 *Ed. III. mem. 10. num. 25. rot. Scot.* *Rex* of *Arundel*, and *W. earl of Salisbury* had *plenam potestatem felon' hominum exercitus illius debite puniendi sicut nos present' fuissimus*. There that army was to go to march towards Scotland, and there is a command to all sheriffs to assist and minister justice. 12 *Ed. III. mem. 6. rot. Alb.* Commission *ad puniendum per arrestationem corporis*. 15 *Ed. 3. mem. 8. rot. Scot.* There is a commission *debite puniendi sicut nos fuissimus present'*. 20 *Ed. III. rot. Franc. mem. 15.* Commission to array *ad debellandum omnes inobedientes & rebelles per corpora sua capere & in carcere & in prison' &c.* This was given to particular towns, and the officers there were to have the jurisdiction. 20 *Ed. III. mem. 25.* There were *custodes maritimi*, and armies allotted to them, & *habent potestatem omnes person' rebelles & inobedientes ad incarcerationem & in prison' committendum & tu vicecomes totam posse ad faciendum &c. & omnes contrarios & inobedientes arrestari facias*. There the sheriff was commanded, together with the general of the army, to repress all infolencies, and if any did resist, he was to join with him. Though there be other commissions of those

times, yet none are of any other nature. In the time of *R. II. 9 R. II. mem. 1 rot. Scot.* A commission to *Clifford* and others, who are made wardens of the marches of Scotland, and have power for all felonies, rapes, &c. to judge *secundum leges marchiar'* which was a known law in those parts. In the reign of *Hen. IV. Rot. pat. Hen. IV. par. 2. mem. 10.* a commission to *Green*, *ad arraiaandum & omnes contrarios & inobedientes ad incarcerationem*; and the like commission went to every county, and to the sheriff to join and attend, and to imprison, &c. 5 *H. IV. rot. parl. mem. 24.* Divers commissions went in divers forms, but there came a commission *ad arraiaandum*, and it was brought in question, and then a form was framed, and put in a bill of parliament, and shewed that no other commissions might go out. That commission is *ad arraiaandum*, and to lead, &c. and for the disobedient to imprison them, and the sheriff is to assist, and to be in the commission; and there is a proviso, that the commissioners and their heirs are not to be questioned if they proceed according to that commission; it is full and reduceth us to a certainty. 5 *Hen. IV. rot. parl. n. 25.* Before that time commissions for martial law did vary; they desire that a constant form may be observed, to give power *ad arraiaandum homines*, and the commissioners have power *ad compellendum homines exercitus, & contrarios arrestandum, & in carcere mittendum, donec aliud inde praeceptum*; and by the same commission there is a direction and command to the sheriff, that he shall be assisting to the commissioners. Note, that is no novelty, for 4 *Hen. IV. rot. pat. par. 1. mem. 29. agrees. 6 Hen. IV. par. 2. pat. in dors. mem. 15.* There was a rebellion in *Wales*, and a commission went out *ad arraiaandum homines, &c.* and if any resisted, &c. *juxta sanam suam discretionem judicabuntur*, and a command to the sheriff to attend; but 7 *Hen. IV. mem. 34. par. 2. pat.* there is a commission in the same form that is prescribed, 5 *Hen. IV. 8 Hen. IV. mem. 16. par. 2. pat.* There is also the same form. 3 *Hen. V. mem. 36. par. 2.* There is a commission to proceed *juxta sanas discretionem vestram arraianare*; and the sheriff there is to aid; 6 *Henry V. mem. 18. Part 1. accords. 13 Henry VI. rot. pat. mem. 10. Tenere arraianationes*, without any jurisdiction. 14 *H. VI. par. 1. mem. 20.* There is power in *millenis or in centenis*, and a command to the sheriff to attend. 21 *Hen. VI. par. 2. mem. 40. accords. 28 Hen. VI. par. 2. mem. 13.* There is a clause and power to command men to watch, and if they perform it not, that *omnibus viis & modis compellere possint*. 29 *H. VI. par. 2. mem. 6.* The commission is according to the 5 *Hen. IV. 32 Hen. VI. mem. 15. in dors.* A commission *quod arraianationes tenere fecerint*. 36 *Hen. VI. par. 1. mem. 2.* There is a clause *punire eos per incarcerationem*, who disobey the watches in the army. 37 *Hen. VI. mem. 6. par. 2. accords. 39 Hen. VI. rot. pat.* A commission directed to divers in *Norfolk*, with power to lead them, *ad debellandum inimicos*

micos regis; and if those who are leaders find any to carry arms to the enemy, that they imprison them, *quousq; secundum leges Angliæ, &c.* and a command to the sheriff to assist them. 39 *Hen. VI. rot. par. no. 32.* The duke of York was made lieutenant to suppress the rebellions in *Wales*, and a command to the sheriff to attend him, and he shall judge and rule according to the *leges terræ* and customs of *Wales*. 1 *Ed. IV. par. 1. mem. 8. rot. pas.* A commission of lieutenantcy was made to to lead an army against *Hen. VI.* and his complices, *ditlos ligeos* in the army *ad regendum & gubernandum*, with a command to the sheriff to give attendance. 1 *Ed. IV. par. 4. mem. 18.* There was another commission in other counties to array an army, *& omnia facere juxta sanas discretiones vestras, & omnes qui conventiculos in exercitu illo faciunt*, to commit to prison, and a direction to the sheriff. 3 *Ed. IV. par. 1. mem. 6.* A commission to the lord *Scroop* and others, who were lieutenants in the north parts, and the sheriff is joyned with them. Power was given to them to array an army, *ad securitatem regni, & eos in conditione illa regnandum & gubernandum, & ad inimicos debellandum, & omnia alia facere juxta sanas discretiones vestras.* 8 *Ed. IV. mem. 12. par. 1. accords.* 39 *Ed. IV. mem. 1. accords.* 9 *Ed. IV. mem. 19. par. 2. accords.* 10 *Ed. IV. mem. 12. 11 Ed. IV. par. 1. mem. 25. accord.* In the 49 *Hen. VI.* the time of his recaption of the crown, a commission was to gather an army, and to keep them together, that they *sint semper parati ad ducendum ad personam nostram, ideo mandamus vos arraiare & omnes subditos per proclamationem arraiare juxta gradus suos & eos, &c.*

About the five propositions sent from the lords to the house of commons.

April 26. 1628.

OUR debate is now how we like of the propositions. Ours were resolutions of law, and no man can make question of them. And as we are constant, so I hope they of other places that have weighed them, are of the same mind with us. But now their lordships laying them by, propound what they would have to be law. As they may speak to what comes from us, so may we to what comes from them, and they did invite us thereto. I think there is not one of the five fit to be desired and asked. The first three are not fit, for there is no use of them in these great questions. The fourth we have already, and the fifth is not fit to be had at all. The first is, to declare that *magna charta* and the six statutes, conceived to be declarations and explanations of that law, do still stand in force to all intents and purposes. Consider what it is we ask. Who doubts whether they stand in force or no? Indeed some have published, that *magna charta* is but a charter, and no law. But it is an act of parliament; and let men speak what they will, that was the fashion of statutes till printing came in. The statutes were sent down in the king's name to be proclaimed, and he prefixed his name, and this was till about

V O L. III.

Hen. VI. Also the body of *magna charta* is, that it is consented to by all the earls, &c. and for the assent there was a fifteenth granted, and clearly that cannot be without an act of parliament: And so constant it is, that all else in it is to this day put in execution. In former parliaments, by thirty at least, it was confirmed, but it was not of necessity, and yet they are surer than this declaration you will now add. For the second, that his majesty will declare that every subject hath a propriety in his goods, and liberty of his person. They that drew this might mean somewhat more than I understand: I know not what we gain. Who doubts of our propriety? I never heard it denied, but in the pulpit, which is of no weight. For the third, that his majesty will confirm all just liberties; none can tell what this will produce. It is not fit we trouble his majesty with it. The fourth is not fit to be asked. That in all cases within the cognizance of the common law concerning the liberties of his subjects, his majesty would proceed according to the common law. I conceive his majesty never proceeded but according to law. It may be there were commitments, yet the courts of justice were open for the parties to seek justice. And if any thing be done against the law there, it is the fault of them that sit there. So we shall take it. But yet his majesty hath done nothing against the law. For the fifth, it is not fit to be had, and therefore not fit to be asked. If we ask it parliamentarily, we shall have a law to that sense, and so we shall destroy our fundamental liberties, which we have already resolved. Now a *convenient time* must be set down. In former times there was no need of such innovations; for such law of state, in a *convenient time* every man was to be delivered by law. If they were so wise then to hold it needless, why is it now necessary? *And for convenient time.* What is *convenient time*? Who shall judge of it, but the judges? And so they now shall have the power of the lords, and of the council. Also now we desire in some cases the prerogative, &c. I would fain see if any person may not be committed at pleasure by this clause, and no man is exempted. At this little gap every man's liberty may in time go out.

At the committee about the Bill for magna charta, and the liberties of the subject.

April 28. 1628.

I Would have the violation tenderly mentioned. Let us set down the statute of *magna charta*. 13 *Hen. IV.* It is adjudged in the parliament roll, that the statute of tallage is an act of parliament. It is not entered in the statute roll, and it was 34 *Ed. I. 19 Ed. II. rot. claus. mem. 15.* *Les comens priunt lou divers fuer' prise & imprisonment per accusement de persons malevolent lou ne fuer' indict acc' al ley del terre, ils priunt que ils que sont prise sans indictment veignent en chancery, & que droit serra fait. Et roy vult que nul serra prise.* But this is not in the parliament roll. 5 *Ed. III. c. 9* 14 *Ed. III. c. 1.* That there shall be no aid nor charge but

by

by parliament. 25 *Ed. III.* c. 4. None shall be attached by petition without presentment, or an original writ. 25 *Ed. III.* no. 16. *Item prient les comens que les loans soient releafe, & nul ferra compell de faire arriere encontre les franchises del terre. Le roy le pleist.* 28 *Ed. III.* c. 3. *Nul ferra ouste de terre ou tenements sans due proces del ley.* 36 *Edw. III.* no. 9. *Que le grand charter ferra duly observe, & nul ferra imprison sur special command.* 36 *Ed. III.* no. 20. *Que nul ferra imprison per special command.* 36 *Ed. III.* no. 24. *Si ascun home soit grievé contre les articles avant dit veigne en chancery & droit ferra fait.* 37 *Edw. III.* no. 10. *Ils la desire que le grand charter & especialment les articles darrein flat. soient execute.* 37 *Ed. III.* c. 18. *Il est contene en le grand charter que nul ferra imprison, &c. ils que sont tiel, &c.* 38 *Ed. III.* no. 10. *Les comens prient que le grand charter & les autres statuts soient execute & que breves serrent grauntez al celsy que sue pur ceo, & si ascun agement soit, fait, il ferra void.*

As the committee about the addition proposed by the lords to be made to the petition of right.

May 21. 1628.

LET us not go too hastily to the question. If there be any objections, let any propounding them, and let others answer them as they think good. I will not touch the reasons already given. The sum of this addition is, that our right is not to be subject to loans or imprisonment without cause, or martial law, but by sovereign power. If it hath no reference to our petition, what doth it here? I am sure all others will say it hath reference, and so must we. How far it doth exceed all examples of former times, no man can shew me the like. I have made that search that fully satisfies me, and I find not another besides 28 *Ed. I.* We have a great many petitions and bills of parliament in all ages, in all which we are sure no such thing is added. That clause of the 28 *Ed. I.* it was not in the petition, but in the king's answer.

In *magna charta* there were no such clauses; the articles themselves are to be seen in a library at *Lambeth*, in a book of that time, upon which the law was made. There was none in the statutes in king *John's* time, for these I have seen, there is no saving. In the articles of *confirmatio chartarum*, is a saving, *les anciens aids*, that is, for *file mayer*, & *pur faire fitz chivalier*, and for ransom. And in the articles of king *John*, in the original charter, which I can shew, there those three aids were named therein, and they were all known. In the 25 *Ed. III.* there is a petition against loans, there is no saving, and so in others. As for that addition in the 28 *Ed. I.* do but observe the petitions after *magna charta*, as 5 *Ed. III.* they put up a petition, Whereas in *magna charta* it is contained, that none be imprisoned but by due process of law; those words are not in *magna charta*, and yet there is no saving; and so in

the 28 *Ed. III.* and 36, 37, and 42 of *Ed. III.* all which pass by petition, and yet there is no saving in them. And there are in them other words that are not in *magna charta*, and yet no saving. For that that Mr. Ipeaker said to the king, it was our heart, and ever shall be; but we then spoke of the king's prerogative by it self, and we are bound to say so: But speaking of our rights, shall we say we are not to be imprisoned, saving but by the king's sovereign power? Say my lauds, without any title, be seized in the king's hand, and I bring a petition of right, and I go to the king, and say, I do by no means seek your majesty's right and title; and after that, I bring a petition or *monstrance de droit*, setting forth my own right and title, and withal set down a saving, that I leave entire his majesty's right, it would be improper. It was objected that in the 28 of *Ed. I.* in the end of *articuli super chartas*, which was a confirmation of *magna charta*, and *charta de foresta*, in the end there is a clause, *savant le droit & signiory*; the words are extant in that roll that is now extant, but the original roll is not extant.

In the 25 *Ed. I.* there was a confirmation of the charter; in the 27 *Ed. I.* the parliament was called, and much stir there was about the charter, and renewing the articles, but then little was done. In 28 *Ed. I.* the commons by petition or bill, did obtain the liberties and articles at the end of the parliament, they were extracted out of the roll, and proclaimed abroad. The addition was added in the proclamation: In the bill there was no *savant*, but afterwards it was put in; and to prove this, it is true there is no parliament roll of that year, yet we have histories of that kind. In the library at *Oxford*, there is a journal of a parliament of that very year, which mentions so much; also in the publick library at *Cambridge* there is a manuscript that belonged to an abbey, it was of the same year 28 *Ed. I.* and it mentions the parliament and the petitions, and *articulos quos petierunt sic confirmaverat rex ut in fine adderet, Salvo jure coronae regis*; and they came by proclamation in *London*; when the people heard this clause added in the end, they fell into execration for that addition, and the great earls that went away satisfied from the parliament, hearing of this, went to the king, and after it was cleared at the next parliament. Now there is no parliament roll of this of that time, only in one roll in the end of *Ed. III.* there is a roll, that recites not the parliament bill, but the statute that was the effect of the roll, that was proclaimed.

About the patent for exchange.

June 23. 1628.

THERE was another patent, and the proclamation refers to that patent. As for the patent, it recites that it belongs to the king to have the sole exchange of all bullion, and so grants that office to the earl of *Holland*, and grants him power to buy bullion. And certainly the king may grant this to one, to have power to buy bullion, and he is no more *mercator*

regis

regis. But this patent hath reference to an indenture, whereby it is covenanted, that none but he shall bring bullion to the mint, and it extendeth to bullion of gold and silver. Whether it be legal in every part or no, we will not meddle. This office is void in regard of the office of the mint, that had this office before. For part it is not against law, but for part it is. So much as concerns the sole exchange of money may be granted. The king hath power to make a sole exchanger of money; antiently there was such an officer. 1 *Job. charter roll.* 135. The exchange of all the money of England is granted. And it is frequent to grant such a grant. And this office is in the office of the mint. Mr. *Bratton*, tit. *de coroua* 117. a. has one article of eyre, *Quis fecit monetam five cambium sine domino rege.* And *Fleta* in the articles of eyre mentions one, *De illicitis cambiatoribus monetæ domini regis.* 6 Joh. pat. rot. *Si quis cambium domini regis, &c. punietur.* 25 Ed. III. cap. 12. None shall exchange money but the king's exchanger, and none shall keep the common exchange. Also by 3 Hen. VII. c. 6. 5 Ed. VI. c. 19. a subject cannot sell money. So then that part of the patent which toucheth the sole exchange of money is not contrary to law.

As for bullion, it was objected that there are two offices, an exchange for bullion and for money. But for bullion, all gold and foreign coin that is not current here, I hold clearly by the common law, may be sold to any, as well as any other commodity. In elder times payment might be made upon contracts, in so much bullion. In *domes-day* book a hundred times it is thus; he holds such and such lands by so much to be paid in *massa & pensò*, that is, weighed, &c. And in the black book in the exchequer, the sheriff brought in rents, either in money, or in so much bullion. 29 Ed. I. reported 7 Ed. VI. *Dyer* 82. there was a coin cal-

led *pollards*, and when it was current a man was bound to pay 100 l. Afterwards the *pollards* were cried down, and the debtor tendered the 100 l. in *pollards*, which were refused, and an action of debt was brought, and the court adjudged that the payment should be in *pollards*, which were no more than bullion. 9 Hen. VII. 16. per *Brian*. One brings action upon an obligation to pay five pounds of pure gold, which proved that pure gold might be paid. By which it is apparent, that the subjects might by the common law pass bullion among themselves. *Articuli super chartas cap. ultimo.* If goldsmiths would, they might buy gold to sell it again. 9 Ed. III. 2 stat. *de moneta*, c. 2. The *French* differed from the *English*, and there it is said, that any might bring to the exchanges bullion and silver; so that doth not mention gold. 4 Hen. VII. c. 2. It is ordained, that the goldsmiths shall not sell silver in the mass; but there is a long preamble; and if it had been conceived that there had been such a prerogative in the king, there should not have been an act of parliament for it. 9 Ed. III. It is expressed, that any may bring bullion to the exchanges; but that doth not restrain all others, as if all bullion should be brought to the exchanger. No other is excluded to buy it; for if a man buy of him, he cannot be indicted. But by this grant here, it is forbidden that any should buy gold, or silver, but only the exchanger. It is agreed, that the king may grant this office, but the king cannot make a dispensation of a penal law. The king here grants that none shall buy gold, but the patentee and his deputies. This patent is contrary to the 21 *Jar.* for this is sole buying, and sole selling, which might before be sold by any other subject. And so this patent is contrary to the law for the bullion, and not for the silver and coin.



T A B L E
T A L K.

VOL. III.

12 E

TO

(2004)

To the Honourable

Mr. JUSTICE HALES,

One of the

JUDGES of the COMMON-PLEAS;

And to the much Honoured

EDWARD HEYWOOD, JOHN VAUGHAN, and
ROWLAND JEWKS, *Esquires*.

Most worthy gentlemen,

WERE you not executors to that person, who (while he lived) was the glory of the nation; yet I am confident any thing of his would find acceptance with you; and truly the sense and notion here is wholly his, and most of the words. I had the opportunity to hear his discourse twenty years together; and least all those excellent things that usually fell from him might be lost, some of them, from time to time, I faithfully committed to writing, which here digested into this method, I humbly present to your hands. You will quickly perceive them to be his, by the familiar illustrations wherewith they are set off, and in which way, you know, he was so happy, that (with a marvellous delight to those that heard him) he would presently convey the highest points of religion, and the most important affairs of state to an ordinary apprehension.

In reading, be pleased to distinguish *Times*, and in your fancy carry along with you, the *When* and the *Why*, many of these things were spoken; This will give them the more life, and the smarter relish. 'Tis possible the entertainment you find in them, may render you the more inclinable to pardon the presumption of

Your most obliged, and

most humble servant,

Ri. Milward.

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T A B L E T A L K.

Abbies. Priors.

1. **T**HE unwillingness of the monks to part with their land, will fall out to be just nothing, because they were yielded up to the king by a supreme hand, *viz.* a parliament. If a king conquer another country, the people are loth to lose their lands; yet no divine will deny, but the king may give them to whom he please. If a parliament make a law concerning leather, or any other commodity, you and I, for example, are parliament-men; perhaps in respect to our own private interests, we are against it, yet the major part conclude it, we are then involved, and the law is good.

2. When the founders of abbies laid a curse upon those that should take away those lauds, I would fain know what power they had to curse me. 'Tis not the curses that come from the poor, or from any body, that hurt me, because they come from them, but because I do something ill against them, that deserves God should curse me for it. On the other side, 'tis not a man's blessing me, that makes me blessed; he only declares me to be so, and if I do well, I shall be blessed, whether any bless me or not.

3. At the time of dissolution, they were tender in taking from the abbots and priors their lands and their houses, till they surrendered them, as most of them did. Indeed the prior of *St. Johns*, Sir *Richard Weston*, being a stout man, got into *France*, and stood out a whole year, at last submitted, and the king took in that priory also, to which the *Temple* belonged, and many other houses in *England*. They did not then cry no abbots, no priors, as we do now no bishops, no bishops.

4. *Henry V.* put away the friers aliens, and seized to himself 100000 *l.* a year, and therefore they were not the protestants only, that took away church lands.

5. In queen *Elizabeth's* time, when all the abbies were pulled down, all good works de-

faced, then the preachers must cry up justification by faith, not by good works.

Articles.

THE nine and thirty articles are much another thing in *Latin*, in which tongue they were made, than they are translated into *English*. They were made at three several convocations, and confirmed by act of parliament six or seven times after. There is a secret concerning them: Of late, ministers have subscribed to all of them; but by the act of parliament that confirmed them, they ought only to subscribe to those articles which contain matter of faith, and the doctrine of the sacraments, as appears by the first subscriptions. But bishop *Bancroft* (in the convocation held in king *James's* days) began it, that ministers should subscribe to three things, to the king's supremacy, to the common prayer, and to the thirty-nine articles: Many of them do not contain matter of faith. Is it matter of faith how the church should be governed? Whether infants should be baptized? Whether we have any property in our goods? &c.

Baptism.

1. IT was a good way to persuade men to be christened, to tell them, that they had a foulness about them, *viz.* original sin, that could not be washed away but by baptism.

2. The baptizing of children with us, does only prepare a child against he comes to be a man, to understand what christianity means. In the church of *Rome*, it hath this effect, it frees children from hell. They say they go into *limbus infantum*. It succeeds circumcision, and we are sure the child understood nothing of that at eight days old: Why then may not we as reasonably baptize a child at that age? In *England*, of late years, I ever thought the parson baptized his own fingers, rather than the child.

3. In the primitive times, they had godfathers to see the children brought up in the christian religion, because many times, when the

father was a christian, the mother was not; and sometimes when the mother was a christian, the father was not; and therefore they made choice of two or more that were christians, to see their children brought up in that faith.

Bastard.

It is said, the xxiiij of Deut. 2. *A bastard shall not enter into the congregation of the lord, even to the tenth generation.* Non ingreditur in ecclesiam domini, he shall not enter into the church. The meaning of the phrase is, he shall not marry a Jewish woman. But upon this, grossly mistaken, a bastard at this day in the church of Rome, without a dispensation, cannot take orders: The thing haply well enough, where 'tis so settled: But that it is upon a mistake (the place having no reference to the church) appears plainly by what follows at the third verse; *An Ammonite or Moabite shall not enter into the congregation of the lord, even to the tenth generation.* Now you know with the Jews an Ammonite, or a Moabite, could never be a priest, because their priests were born so, not made.

Bible, scripture.

1. IT is a great question how we know scripture to be scripture, whether by the church, or by man's private spirit. Let me ask you how I know any thing? How I know this carpet to be green? First, because somebody told me it was green: That you call the church in your way. Then after I have been told it is green, when I see that colour again, I know it to be green, my own eyes tell me it is green; That you call the private spirit.

2. The English translation of the bible, is the best translation in the world, and renders the sense of the original best, taking in for the English translation, the bishops bible, as well as king James's. The translators in king James's time took an excellent way. That part of the bible was given to him who was most excellent in such a tongue (as the apocrypha to Andrew Douvres) and then they met together, and one read the translation, the rest holding in their hands some bible, either of the learned tongues, or French, Spanish, Italian, &c. If they found any fault they spoke, if not, he read on.

3. There is no book so translated as the bible for the purpose. If I translate a French book into English, I turn it into English phrase, not into French English. *Il fait froid*, I say, 'tis cold, not, it makes cold; but the bible is rather translated into English words, than into English phrase. The Hebrews are kept, and the phrase of that language is kept: As for example, *he uncovered her shame*, which is well enough, so long as scholars have to do with it; but when it comes among the common people, lord, what jeer do they make of it!

4. *Scrutimini scripturas.* Their two words have undone the world. Because Christ spoke

it to his disciples, therefore we must all, men, women and children, read and interpret the scripture.

5. Henry VIII. made a law, that all men might read the scripture, except servants, but no woman, except ladies and gentlewomen, who had leisure, and might ask somebody the meaning. The law was repealed in Edward the sixth's days.

6. Laymen have best interpreted the hard places in the bible, such as *Joannes Picus, Scaliger, Grotius, Salmasius, Heinsius, &c.*

7. If you ask which of *Erasmus, Beza, or Grotius*, did best upon the new testament? it is an idle question, for they all did well in their way. *Erasmus* broke down the first brick; *Beza* added many things, and *Grotius* added much to him, in whom we have either something new, or something heightened, that was said before, and so it was necessary to have them all three.

8. The text serves only to guess by, we must satisfy our selves fully out of the authors that lived about those times.

9. In interpreting the scripture, many do, as if a man should see one have ten pounds, which he reckoned by 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, meaning four was, but four units, and five, five units, &c. and that he had in all but ten pounds; the other that sees him, takes not the figures together as he doth, but picks here and there, and thereupon reports, that he hath five pounds in one bag, and six pounds in another bag, and nine pounds in another bag, &c. when, as in truth, he hath but ten pounds in all. So we pick out a text here, and there, to make it serve our turn; whereas, if we take it all together, and considered what went before, and what followed after, we should find it meant no such thing.

10. Make no more allegories in scripture than needs must. The fathers were too frequent in them: They indeed, before they fully understood the literal sense, looked out for an allegory. The folly whereof you may conceive thus; Here at the first sight appears to me in my window, a glass and a book, I take it for granted it is a glass and a book, thereupon I go about to tell you what they signify; afterwards, upon nearer view, they prove no such thing, one is a box made like a book, the other is a picture made like a glass. Where is now my allegory?

11. When men meddle with the literal text, the question is, where they should stop? In this case, a man must venture his discretion, and do his best to satisfy himself and others in those places where he doubts. For although we call the scripture the word of God, as it is, yet it was writ by a man, a mercenary man, whose copy, either might be false, or he might make it false: For example, here were a thousand bibles printed in England with the text thus, *Thou shalt commit adultery*, the word *not*, left out. Might not this text be mended?

12. The scripture may have more senses besides the literal, because God understands all things at once; but a man's writing has but one

one true sense, which is that, which the author meant when he writ it.

13. When you meet with several readings of the text, take heed you admit nothing against the tenets of your church, but do as if you were going over a bridge, be sure you hold fast by the rail, and then you may dance here and there as you please. Be sure you keep to what is settled, and then you may flourish upon your various lessons.

14. The *apocrypha* is bound with the bibles of all churches that have been hitherto. Why should we leave it out? The church of Rome has her *apocrypha*, viz. *Susanna*, and *Bel and the Dragon*, which she does not esteem equally with the rest of *those* books that we call *apocrypha*.

Bishops before the parliament.

1. A BISHOP, as a bishop, had never any ecclesiastical jurisdiction: For as soon as he was *electus confirmatus*, that is, after the three proclamations in *Bow-church*, he might exercise jurisdiction, before he was consecrated; but till then, he was no bishop, neither could he give orders. Besides, *suffragans* were bishops, and they never claimed any jurisdiction.

2. Antiently, the noble men lay within the city for safety and security. The bishops houses were by the water-side, because they were held sacred persons, which no body would hurt.

3. There was some sense for *commendams* at first, when there was a living void, and never a clerk to serve it, the bishops were to keep it till they found a fit man; but now, 'tis a trick for the bishop to keep it for himself.

4. For a bishop to preach, is to do other folks office. As if the steward of the house should execute the porter's or the cook's place; it is his business to see that they and all other about the house perform their duties.

5. That which is thought to have done the bishops hurt, is their going about to bring men to a blind obedience, imposing things upon them, though perhaps small and well enough, without preparing them, and insinuating into their reasons and fancies. Every man loves to know his commander. I wear those gloves, but perhaps if an alderman should command me, I should think much to do it: What has he to do with me? Or if he has, peradventure I do not know it. This jumping upon things at first dash will destroy all. To keep up friendship, there must be little addresses and applications; whereas bluntness spoils it quickly: To keep up the hierarchy, there must be little applications made to men, they must be brought on by little and little; so in the primitive times the power was gained, and so it must be continued. *Scaliger* said of *Erasmus*: *Si minor esse voluit, major fuisset*; so we may say of the bishops, *Si minores esse voluerint, majores fuissent*.

6. The bishops were too hasty, else with a discreet slowness they might have had what they aimed at. The old story of the fellow, that told the gentleman, he might get to such a

place, if he did not ride too fast, would have fitted their turn.

7. For a bishop to cite an old canon to strengthen his new articles, is as if a lawyer should plead an old statute that has been repealed, God knows how long.

Bishops in the parliament.

1. BISHOPS have the same right to sit in parliament, as the best earls and barons; that is, those that were made by writ: If you ask one of them, *Arundel*, *Oxford*, *Northumberland*, why they sit in the house? They can only say, their father sat there before them, and their grand-father before him, &c. And so says the bishop: He that was a bishop of this place before me, sat in the house, and he that was a bishop before him, &c. Indeed your later earls and barons have it expressed in their patents, that they shall be called to the parliament.

Objection. But the lords sit there by blood, the bishops not.

Answer. It is true, they sit not there both the same way, yet that takes not away the bishop's right. If I am a parson of a parish, I have as much right to my glebe and tythe, as you have to your land, which your ancestors have had in that parish eight hundred years.

2. The bishops were not barons, because they had baronies annexed to their bishopricks (for few of them had so, unless the old ones *Canterbury*, *Winchester*, *Durham*, &c. the new erected we are sure had none, as *Glocester*, *Peterborough*, &c. besides, few of the temporal lords had any baronies.) But they are barons, because they are called by writ to the parliament, and bishops were in the parliament ever since there was any mention or sign of a parliament in *England*.

3. Bishops may be judged by the peers, though in time of popery it never happened, because they pretended they were not obnoxious to a secular court; but their way was to cry, *ego sum frater domini papae*, I am brother to my lord the pope, and therefore take not my self to be judged by you: In this case they impawned a *Middlesex* jury, and dispatched the business.

4. Whether may bishops be present in cases of blood?

Answer. That they had a right to give votes, appears by this; always when they did go out, they left a proxy; and in the time of the abbots, one man had ten, twenty, or thirty voices. In *Richard* the 11th's time there was a protestation against the canons, by which they were forbidden to be present in case of blood. The statute of the 25th of *Hen. VIII.* may go a great way in this business. The clergy were forbidden to use or cite any canon, &c. but in the latter end of the statute, there was a clause, that such canons that were in use in this kingdom, should be in force till the thirty-two commissioners appointed should make others, provided they were not contrary to the king's

king's supremacy. Now the question will be, whether these canons for blood were in use in this kingdom or no? The contrary whereof may appear by many precedents in *Rich. III.* and *Hen. VII.* and the beginning of *Hen. VIII.* in which time there were more attained than since, or scarce before. The canons of irregularity of blood were never received in *England*, but upon pleasure. If a lay lord was attained, the bishops assented to his condemning, and were always present at the passing of the bill of attainder: But if a spiritual lord, they went out, as if they cared not whose head was cut off, so none of their own. In those days the bishops, being of great houses, were often entangled with the lords in matters of treason; but when do you hear of a bishop a traitor now?

5. You would not have bishops meddle with temporal affairs. Think who you are that say it. If a papist, they do in your church; if an *English* protestant, they do among you; if a presbyterian, where you have no bishops, you mean your presbyterian lay elders should meddle with temporal affairs as well as spiritual. Besides, all jurisdiction is temporal, and in no church, but they have some jurisdiction or other. The question then will be reduced to *magis* and *minus*; they meddle more in one church than in another.

6. *Objection.* Bishops give not their votes by blood in parliament, but by an office annexed to them, which being taken away, they cease to vote; therefore there is not the same reason for them as for temporal lords.

Answer. We do not pretend they have that power the same way, but they have a right: He that has an office in *Westminster-hall* for his life, the office is as much his, as his land is his that hath land by inheritance.

7. Whether had the inferior clergy ever any thing to do in the parliament?

Answer. No, no otherwise than thus: there were certain of the clergy that used to assemble near the parliament, with whom the bishops, upon occasion might consult; but there were none of the convocation, as it was afterwards settled, *viz.* the dean, the arch-deacon, one for the chapter, and two for the diocese, but it happened by continuance of time, to save charges and trouble; their voices and the consent of the whole clergy were involved in the bishops, and at this day the bishops write run, to bring all these to the parliament, but the bishops themselves stand for all.

8. Bishops were formerly one of these two conditions; either men bred canonists and civilians, sent up and down ambassadors to *Rome* and other parts, and so by their merit came to that greatness, or else great noble men's sons, brothers, and nephews, and so born to govern the state. Now they are of a low condition, their education nothing of that way; he gets a living, and then a greater living, and then a greater living than that, and so comes to govern.

9. Bishops are now unfit to govern, because of their learning: They are bred up in another law: They run to the text for something done

amongst the *Jews*, that nothing concerns *England*: It is just as if a man would have a kettle, and he would not go to our brazier to have it made, as they make kettles, but he would have it made, as *Hiram* made his brass-work, who wrought in *Solomon's* temple.

10. To take away bishop's votes, is but the beginning to take them away; for then they can be no longer useful to the king or state. 'Tis but like the little wimble, to let in the greater auger.

Objection. But they are but for their life, and that makes them always go for the king as he will have them.

Answer. This is against a double charity; for you must always suppose a bad king and bad bishops. Then again, whether will a man be sooner content, himself should be made a slave, or his son after him? When we talk of our children, we mean ourselves. Besides, they that have posterity are more obliged to the king, than they that are only for themselves, in all the reason in the world.

11. How shall the clergy be in the parliament, if the bishops are taken away?

Answer. By the laity; because the bishops, in whom the rest of the clergy are included, consent to the taking away their own votes, by being involved in the major part of the house. This follows naturally.

12. The bishops being put out of the house, whom will they lay the fault upon now? When the dog is beat out of the room, where will they lay the stink?

Bishops out of the parliament.

1. IN the beginnings, bishops and presbyters were alike; like the gentlemen in the country, whereof one is made deputy lieutenant, another justice of peace; so one is made a bishop, another a dean: And that kind of government by arch-bishops, and bishops, no doubt came in, in imitation of the temporal government, not *jure divino*. In time of the *Roman* empire, where they had a *legatus*, there they placed an arch-bishop; where they had a *rector*, there a bishop; that every one might be instructed in christianity, which now they had received into the empire.

2. They that speak ingenuously of bishops and presbyters, say, that a bishop is a great presbyter, and during the time of his being bishop, above a presbyter: As your president of the college of physicians, is above the rest, yet he himself is no more than a doctor of physick.

3. The words, *bishop* and *presbyter*, are promiscuously used; that is confessed by all: And though the word, *bishop*, be in *Timothy* and *Titus*, yet that will not prove the bishops ought to have a jurisdiction over the presbyter, though *Timothy* or *Titus* had by the order that was given them. Some body must take care of the rest: And that jurisdiction was but to excommunicate, and that was but to tell them, they should come no more into their company. Or grant they did make canons

one for another, before they came to be in the state : Does it follow they must do so when the state has received them into it? What if *Timothy* had power in *Epheſus*, and *Titus* in *Crete* over the presbyters? Does it follow therefore the bishop must have the same in *England*? Must we be governed like *Epheſus* and *Crete*?

4. However some of the bishops pretend to be *jure divino*, yet the practice of the kingdom has ever been otherwise; for whatever bishops do otherwise than the law permits, *Westminster-hall* can controul, or send them to abſolve, &c.

5. He that goes about to prove bishops *jure divino*, does as a man, that having a sword, shall strike it against an anvil, if he strike it a while there, he may peradventure loosen it, though it be never so well riveted; it will serve to strike another sword, or cut flesh, but not against an anvil.

6. If you should say, you hold your land by *Moses* or God's law, and would try it by that, you may perhaps lose, but by the law of the kingdom you are sure of it. So may the bishops by this plea of *jure divino* lose all. The pope had as good a title by the law of *England* as could be had, had he not left that, and claimed by power from God.

7. There is no government enjoyed by example, but by precept: It does not follow we must have bishops still, because we have had them so long. They are equally mad who say bishops are so *jure divino*, that they must be continued, and they who say, they are so antichristian, that they must be put away. All is as the state pleases.

8. To have no ministers, but presbyters, is as if in the temporal state, they should have no officers but constables. Bishops do best stand with monarchy, that as amongst the laity, you have dukes, lords, lieutenants, judges, &c. to send down the king's pleasure to his subjects; so you have bishops to govern the inferior clergy: These upon occasion may address themselves to the king, otherwise every parson of the parish must come, and run up to the court.

9. The protestants have no bishops in *France*, because they live in a catholic country, and they will not have catholic bishops; therefore they must govern themselves as well as they may.

10. What is that to the purpose, to what end bishop's lands were given to them at first? You must look to the law and custom of the place. What is that to any temporal lord's estate, how lands were first divided, or how in *William* the conqueror's days? And if men at first were juggled out of their estates, yet they are rightly their successors. If my father cheat a man, and he consent to it, the inheritance is rightly mine.

11. If there be no bishops, there must be something else which has the power of bishops, though it be in many. And then had you not as good keep them? If you will have no half crowns, but only single pence, yet thirty

single pence are a half crown: And then had you not as good keep both? But the bishops have done ill. 'Twas the men, not the function: As if you should say, you would have no more half crowns, because they were stolen, when the truth is they were not stolen because they were half crowns, but because they were money, and light in a thief's hand.

12. They that would pull down the bishops, and erect a new way of government, do as he that pulls down an old house, and builds another, in another fashion. There is a great deal of do, and a great deal of trouble, the old rubbish must be carried away, and new materials must be brought, work-men must be provided; and perhaps the old one would have served as well.

13. If the parliament and presbyterian party should dispute who should be judge? Indeed in the beginning of queen *Elizabeth*, there was such a difference between the protestants and papists, and Sir *Nicholas Bacon*, lord chancellor, was appointed to be judge; but the conclusion was, the stronger party carried it: For so religion was brought into kingdoms; so it has been continued, and so it may be cast out, when the state pleases.

14. 'Twill be a great discouragement to scholars, that bishops should be put down: For now the father can say to his son, and the tutor to his pupil, *Study hard, and you shall have vocem & sedem in parlamento*; then it must be, *Study hard, and you shall have a hundred a year if you please your parish*.

Object. But they that enter into the ministry for preferment, are like *Judas* that looked after the bag.

Answer. It may be so, if they turn scholars at *Judas*'s age. But what arguments will they use to persuade them to follow their books, while they are young?

Books. Authors.

1. THE giving a bookfeller his price for his books, has this advantage; He that will do so, shall have the refusal of whatsoever comes to his hand, and so by that means get many things, which otherwise he never should have seen. So it is in giving a bawd her price.

2. In buying books or other commodities, it is not always the best way to bid half so much as the seller asks: Witness the country fellow, that went to buy two groat shillings, they asked him three shillings, and he bid them eighteen-pence.

3. They counted the price of the books (*Acts* xix. 19.) and found fifty thousand pieces of silver, that is so many *sestertii*, or so many three half-pence of our money; about three hundred pound sterling.

4. Popish books teach and inform; what we know, we know much out of them. The fathers, church story, school-men, all may pass for popish books; And if you take away them, what learning will you leave? Besides who must be judge? The customer or the waiter? If he

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disallows a book, it must not be brought into the kingdom; then lord have mercy upon all scholars! These puritan preachers if they have any things good, they have it out of popish books, though they will not acknowledge it, for fear of displeasing the people. He is a poor divine that cannot sever the good from the bad.

5. 'Tis good to have translations, because they serve as a comment, so far as the judgment of the man goes.

6. In answering a book, 'tis best to be short, otherwise he that I write against will suspect I intend to weary him, not to satisfy him. Besides in being long, I shall give my adversary a huge advantage; somewhere or other he will pick a hole.

7. In quoting of books, quote such authors as are usually read, others you may read for your own satisfaction, but not name them.

8. Quoting of authors is most for matter of fact, and then I write them as I would produce a witness; sometimes for a free expression, and then I give the author his due, and gain myself praise by reading him.

9. To quote a modern *Dutch* man where I may use a classic author, is as if I were to justify my reputation, and I neglect all persons of note and quality that know me, and bring the testimonial of the scullion in the kitchen.

Canon-law.

If I would study the canon-law, as it is used in *England*, I must study the heads here in use, then go to the practitioners in those courts where that law is practised, and know their customs. So for all the study in the world.

Ceremony.

2. CEREMONY keeps up all things; 'tis like a penny-glass to a rich spirit, or some excellent water, without it the water were spilt, the spirit lost.

2. Of all people, ladies have no reason to cry down ceremony, for they take themselves slighted without it. And were they not used with ceremony, with complements and addresses, with legs, and kissing of hands, they were the pitifullest creatures in the world: But yet methinks, to kiss their hands after their lips, as some do, is like little boys, that after they eat the apple, fall to the paring, out of a love they have to the apple.

Chancellor.

1. THE bishop is not to sit with the chancellor in his court (as being a thing either beneath him, or beside him) no more than the king is to sit in the king's bench, when he has made a lord chief justice.

2. The chancellor governed in the church, who was a lay-man. And therefore 'tis false which they charge the bishops with, that they challenge sole jurisdiction. For the bishop can no more put out the chancellor, than the chancellor the bishop. They were many of them

made chancellors for their lives: And he is the fittest man to govern, because divinity so overwhelms the rest.

Changing sides.

1. 'Tis the trial of a man to see if he will change his side; and if he be so weak as to change once, he will change again. Your country fellows have a way to try if a man be weak in the hams, by coming behind him, and giving him a blow unawares; if he bend once, he will bend again.

2. The lords that fall from the king, after they have got estates by base flattery at court, and now pretend conscience, do as a vintner, that when he first sets up, you may bring your wench to his house, and do your things there; but when he grows rich, he turns concititious, and will sell no wine upon the sabbath day.

3. Colonel *Goring* serving first the one side, and then the other, did like a good miller, that knows how to grind which way soever the wind sits.

4. After *Luther* had made a combustion in *Germany* about religion, he was sent to by the pope, to be taken off, and offered any preferment in the church, that he would make choice of: *Luther* answered, if he had offered half as much at first, he would have accepted it, but now he had gone so far, he could not come back. In truth he had made himself a greater thing than they could make him; the *German* princes courted him; he was become the author of a sect ever after to be called *Lutherans*. So have our preachers done that are against the bishops, they have made themselves greater with the people than they can be made the other way, and therefore there is the less charity probably in bringing them off. Charity to *strangers* is enjoined in the text. By *strangers* is there understood, those that are not of our own kin, strangers to your blood, not those you cannot tell whence they come; that is, be charitable to your neighbours whom you know to be honest poor people.

Christmas.

1. CHRISTMAS succeeds the *Saturnalia*, the same time, the same number of holy-days; then the master waited upon the servant like the lord of *mis-rule*.

2. Our meats and our sports (much of them) have relation to church-works. The coffin of our christmas pies, in shape long, is in imitation of the cratch; Our choicing kings and queens on twelfth-night, hath reference to the three kings. So likewise our eating of fritters, whipping of tops, roasting of herrings, jack of lents, &c. they were all in imitation of church-works, emblems of martyrdom. Our tansies at *Easter* have reference to the bitter herbs; though at the same time 'twas always the fashion, for a man to have a gammon of bacon, to shew himself to be no Jew.

Christians

Christians.

1. IN the high church of *Jerusalem*, the christians were but another sect of *Jews*, that did believe the *Messias* was come. To be called, was nothing else, but to become a christian, to have the name of a christian, it being their own language, for amongst the *Jews*, when they made a doctor of law, 'twas said he was called.

2. The *Turks* tell their people of a heaven where there is sensible pleasure, but of a hell where they shall suffer they do not know what. The christians quite invert this order, they tell us of a hell where we shall feel sensible pain, but of a heaven where we shall enjoy we cannot tell what.

3. Why did the heathens object to the christians, that they worshipped an ass's head? You must know, that to a heathen, a *Jew* and a christian were all one, that they regarded him not, so he was not one of them. Now that of the ass's head might proceed from such a mistake as this. By the *Jewish* law, all the firstlings of cattle were to be offered to God, except a young ass, which was to be redeemed; a heathen being present, and seeing young calves, and young lambs killed at their sacrifices, only young asses redeemed, might very well think they had that silly beast in some high estimation, and thence might imagine they worshipped it as a God.

Church.

1. HERETOFORE the kingdom let the church alone, let them do what they would, because they had something else to think of, viz. wars; but now in time of peace, we begin to examine all things, will have nothing but what we like, grow dainty and wanton; just as in a family, the heir uses to go a hunting, he never considers how his meal is dressed, takes a bit, and away; but when he stays within, then he grows curious, he does not like this, nor he does not like that, he will have his meat dressed his own way, or peradventure he will dress it himself.

2. It hath ever been the gain of the church, when the king will let the church have no power, to cry down the king, and cry up the church: But when the church can make use of the king's power, then to bring all under the king's prerogative. The catholicks of *England* go one way, and the court clergy another.

3. A glorious church is like a magnificent feast, there is all the variety that may be, but every one chooses out a dish or two that he likes, and lets the rest alone. How glorious soever the church is, every one chooses out of it his own religion, by which he governs himself, and lets the rest alone.

4. The laws of the church are most favourable to the church, because they were the church's own making; as the heralds are the

best gentlemen, because they make their own pedigree.

5. There is a question about that article, concerning the power of the church, whether these words, of having power in controversies of faith, were not stolen in; But 'tis most certain they were in the book of articles that was confirmed, though in some editions they have been left out: But the article before tells you, who the church is, not the clergy, but *coetus fidelium*.

Church of Rome.

1. BEFORE a juggler's tricks are discovered, we admire him, and give him money, but afterwards we care not for them: So 'twas before the discovery of the juggling of the church of *Rome*.

2. Catholicks say, we out of our charity, believe they of the church of *Rome* may be saved: But they do not believe so of us; Therefore their church is better according to ourselves. First, some of them no doubt believe as well of us, as we do of them; but they must not say so. Besides, is that an argument their church is better than ours, because it has less charity?

3. One of the church of *Rome* will not come to our prayers. Does that argue he doth not like them? I would fain see a catholic leave his dinner, because a nobleman's chaplain says grace. Nor haply would he leave the prayers of the church, if going to church were not made a mark of distinction between a protestant and a papist.

Churches.

THE way coming into our great churches was antiently at the west door, that men might see the altar, and all the church before them; the other doors were but posterns.

City.

1. WHAT makes a city? Whether a bishoprick or any of that nature?

Answer. 'Tis according to the first charter which made them a corporation. If they are incorporated by name of *civitas*, they are a city; if by the name of *burgum*, then they are a borough.

2. The lord mayor of *London* by their first charter was to be presented to the king, or in his absence to the lord chief justiciary of *England*, afterwards to the lord chancellor, now to the barons of the exchequer; but still there was a reservation, that for their honour, they should come once a year to the king, as they do still.

Clergy.

1. THOUGH a clergy-man have no faults of his own, yet the faults of the whole tribe shall be laid upon him, so that he shall be sure not to lack.

2. Though

2. The clergy would have us believe them against our own reason; as the woman would have had her husband against his own eyes: What! will you believe your own eyes before your own sweet wife?

3. The condition of the clergy towards their prince, and the condition of the physician is all one: The physicians tell the prince they have *agrick* and *rhubarb*, good for him, and good for his subjects bodies; upon this he gives them leave to use it; but if it prove naught, then away with it, they shall use it no more; So the clergy tell the prince they have physick good for his soul, and good for the souls of his people, upon that he admits them: But when he finds by experience they both trouble him and his people, he will have no more to do with them. What is that to them, or any body else, if a king will not go to heaven?

4. A clergy-man goes not a dram further than this: You ought to obey your prince in general. If he does he is lost: How to obey him, you must be informed by those, whose profession it is to tell you. The parson of the *Tower* (a good discreet man) told doctor *Moseby* (who was sent to me, and the rest of the gentlemen committed the 3 *Carols*, to persuade us to submit to the king) that he found no such words, as *parliament*, *habeas corpus*, *return*, *tozer*, &c. neither in the fathers, nor the school-men, nor in the text, and therefore, for his part, he believed he understood nothing of the business. A satire upon all those clergy-men that meddle with matters they do not understand.

5. All confests there never was a more learned clergy. No man taxes them with ignorance. But to talk of that, is like the fellow that was a great wench, he wished God would forgive him his lechery, and lay usury to his charge. The clergy have worse faults.

6. The clergy and laity together are never like to do well. 'Tis as if a man were to make an excellent feast, and should have his apothecary and physician come into the kitchen: The cooks, if they were let alone, would make excellent meat; but then comes the apothecary, and he puts *rhubarb* into one sauce, and *agrick* into another sauce. Chain up the clergy on both sides.

High commission.

MEN cry out upon the high commission, as if the clergy-men only had to do in it, when I believe there are more lay-men in commission there, than clergymen. If the laymen will not come, whose fault is that? So of the star-chamber, the people think the bishops only censured *Prynne*, *Burton*, and *Bastwick*, when there were but two there, and one spoke not in his own cause.

House of commons.

1. THERE be but two erroneous opinions in the house of commons; That the lords sit only for themselves; when the truth is, they

fit as well for the common-wealth. The knights and burgeses sit for themselves and others, some for more, some for fewer. And what is the reason? Because the room will not hold all; the lords being few, they all come; and imagine the room able to hold all the commons of *England*, then the lords and burgeses would fit no otherwise than the lords do. The second error is, that the house of commons are to begin to give subsidies; yet if the lords dissent, they can give no money.

2. The house of commons is called the lower house in twenty acts of parliament: But what are twenty acts of parliament amongst friends?

3. The form of a charge runs thus, *I accuse in the name of all the commons* of England. How then can any man be as a witness, when every man is made the accuser?

Confession.

1. IN time of parliament it used to be one of the first things the house did, to petition the king that his confessor might be removed, as fearing either his power with the king, or else, least he should reveal to the pope what the house was in doing, as no doubt he did, when the catholick cause was concerned.

2. The difference between us and the papists is, we both allow contrition, but the papists make confession a part of contrition; they say, a man is not sufficiently contrite, till he confess his sins to a priest.

3. Why should I think a priest will not reveal confession? I am sure he will do any thing that is forbidden him, haply not so often as I. The utmost punishment is deprivation. And how can it be proved, that ever any man revealed confession, when there is no witness? And no man can be witness in his own cause. A meer gullery. There was a time when it was publick in the church, and that is much against their auricular confession.

Competency.

THAT which is a competency for one man, is not enough for another; no more than that which will keep one man warm will keep another man warm: One man can go in doublet and hose, when another man cannot be without a cloak, and yet have no more cloaths than is necessary for him.

Great conjunction.

THE greatest conjunction of *Saturn* and *Jupiter*, happens but once in eight hundred years, and therefore astrologers can make no experiments of it, nor foretell what it means; Not but that the stars may mean something, but we cannot tell what because we cannot come at them. Suppose a planet were a simple, or an herb, how could a physician tell the virtue of that simple, unless he could come at it, to apply it?

2. *Conscience.*

Conscience.

1. HE that hath a scrupulous conscience, is like a horse that is not well way'd; he starts at every bird that flies out of the hedge.

2. A knowing man will do that, which a tender conscience man dares not do, by reason of his ignorance, the other knows there is no hurt: As a child is afraid to go into the dark, when a man is not, because he knows there is no danger.

3. If we once come to leave that out-loose, as to pretend conscience against law, who knows what inconvenience may follow? For thus, suppose an anabaptist comes and takes my horse, I sue him, he tells me he did according to his conscience, his conscience tells him all things are common amongst the saints, what is mine is his; therefore you do ill to make such a law: If any man takes another's horse he shall be hanged. What can I say to this man? He does according to his conscience. Why is not he as honest a man, as he that pretends a ceremony established by law, is against his conscience? Generally to pretend conscience against law is dangerous, in some cases haply we may.

4. Some men make it a case of conscience, whether a man may have a pigeon-house, because his pigeons eat other folks corn. But there is no such thing as conscience in the business: The matter is, whether he be a man of such quality, that the state allows him to have a dove-house; if so, there's an end of the business, his pigeons have a right to eat where they please themselves.

Consecrated places.

1. THE Jews had a peculiar way of consecrating things to God, which we have not.

2. Under the law, God, who was master of all, made choice of a temple to worship in, where he was more especially present: Just as the master of the house, who owns all the house, makes choice of one chamber to lie in, which is called the master's chamber; But under the gospel there was no such thing, temples and churches are set apart for the convenience of men to worship in; They cannot meet upon the point of a needle, but God himself makes no choice.

3. All things are God's already, we can give him no right by consecrating any, that he had not before, only we set it apart to his service. Just as a gardiner brings his lord and master a basket of abricots, and presents them; his lord thanks him, perhaps gives him something for his pains, and yet the abricots were as much his lords before as now.

4. What is consecrated, is given to some particular man, to do God service, not given to God, but given to man, to serve God: And there's not any thing, lands, or goods, but some men or other have it in their power to dispose of as they please. The saying things conse-

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crated cannot be taken away, makes men afraid of consecration.

5. Yet consecration has this power, when a man has consecrated any thing to God, he cannot of himself take it away.

Contracts.

1. If our fathers had lost their liberty, why may not we labour to regain it?

Answer. We must look to the contract, if that be rightly made, we must stand to it. If we once grant we may recede from contracts, upon any inconvenience that may afterwards happen, we shall have no bargain kept. If I sell you a horse, and do not like my bargain, I will have my horse again.

2. Keep your contracts. So far a divine goes, but how to make our contracts is left to our selves; and as we agree upon the conveying of this house, or that land, so it must be. If you offer me a hundred pounds for my glove, I tell you what my glove is, a plain glove, pretend no virtue in it, the glove is my own, I profess not to sell gloves, and we agree for an hundred pounds; I do not know why I may not with a safe conscience take it. The want of that common obvious distinction of *jus praeceptivum*, and *jus permissivum*, does much trouble men.

3. Lady Kent articked with Sir Edward Herbert, that he should come to her when she sent for him, and stay with her as long as she would have him, to which he set his hand; then he articked with her, that he should go away when he pleased, and stay away as long as he pleased, to which she set her hand. This is the epitome of all the contracts in the world, betwixt man and man, betwixt prince and subject; they keep them as long as they like them, and no longer.

Council.

THEY talk (but blasphemously enough) that the holy ghost is president of their general councils; when the truth is, the odd man is still the holy ghost.

Convocation.

1. WHEN the king sends his writ for a parliament, he sends for two knights for a shire, and two burgessees for a corporation: But when he sends for two archbishops for a convocation, he commands them to assemble the whole clergy; but they out of custom amongst themselves, send to the bishops of their provinces, to will them to bring two clerks for a diocese, the dean, one for the chapter, and the arch-deacons, but to the king every clergy-man is there present.

2. We have nothing so nearly expresses the power of a convocation, in respect of a parliament, as a court-leet, where they have a power to make by-laws, as they call them; as that a man shall put so many cows or sheep in the common; but they can make nothing that is contrary to the laws of the kingdom.

11 H

Creed

Creed.

ATHANASIUS'S creed is the shortest, take away the preface, and the force, and the conclusion, which are not part of the creed. In the *Nicene* creed it is *ὡς ἰσχυρίζομαι*, *I believe in the church*; but now, as our common-prayer has it, *I believe one catholic and apostolic church*; They like not creeds, because they would have no forms of faith, as they have none of prayer, though there be more reason for the one than for the other.

Damnation.

1. If the physician sees you eat any thing that is not good for your body, to keep you from it, he cries it is poison: If the divine sees you do any thing that is hurtful for your soul, to keep you from it, he cries you are damned.

2. To preach long, loud, and damnation, is the way to be cried up. We love a man that damns us, and we run after him again to save us. If a man had a fore leg, and he should go to an honest judicious surgeon, and he should only bid him keep it warm, and anoint with such an oil, (an oil well known) that would do the cure, haply he would not much regard him, because he knows the medicine before hand an ordinary medicine. But if he should go to a surgeon that should tell him, your leg will gangreen within three days, and it must be cut off, and you will die, unless you do something that I could tell you: What listening there would be to this man? Oh for the lord's sake, tell me what this is, I will give you any content for your pains.

Devils.

1. WHY have we none possessed with devils in *England*? The old answer is, the protestants the devil hath already, and the papists are so holy, he dares not meddle with them. Why then, beyond seas, where a nun is possessed, when a hugenot comes into the church, does not the devil hunt him out? The priest teaches him, you never saw the devil throw up a nun's coats: Mark that, the priest will not suffer it, for then the people will spit at him.

2. Casting out devils is mere juggling. They never cast out any but what they first cast in. They do it where, for reverence, no man shall dare to examine it. They do it in a corner, in a mortice-hole, not in the market-place. They do nothing but what may be done by art. They make the devil fly out of the window in the likeness of a bat, or a rat: Why do they not hold time? Why, in the likeness of a bat, or a rat, or some creature? That is, why not in some shape we paint him in, with claws and horns? By this trick they gain much, gain upon men's fancies, and so are revered. And certainly if the priest deliver me from him, that is my most deadly enemy, I have all the reason in the world to reverence him.

Objection. But if this be juggling, why do they punish impostures?

Answer. For great reason, because they do not play their part well, and for fear others should discover them, and so all of them ought to be of the same trade.

3. A person of quality came to my chamber in the *Temple*, and told me he had two devils in his head; I wondered what he meant, and just at that time, one of them bid him kill me, [with that I begun to be afraid, and thought he was mad] he said he knew I could cure him, and therefore intreated me to give him something, for he was resolved he would go to no body else. I perceiving what an opinion he had of me, and that it was only melancholly that troubled him, took him in hand, and warranted him, if he would follow my directions, to cure him in a short time. I desired him to let me be alone about an hour, and then to come again, which he was very willing to. In the mean time I got a card, and lapt it up handsome in a piece of taffata, and put strings to the taffata, and when he came, gave it to him, to hang about his neck, and withal charged him, that he should not disorder himself neither with eating, or drinking, but eat very little of supper, and lay his prayers duly when he went to bed, and I made no question but he would be well in three or four days. Within that time I went to dinner to his house, and asked him how he did? He said he was much better, but not perfectly well, or in truth he had not dealt clearly with me, he had four devils in his head, and he perceived two of them were gone, with that which I had given him, but the other two troubled him still. Well said I, I am glad two of them are gone, I make no doubt but to get away the other two likewise. So I gave him another thing to hang about his neck. Three days after, he came to me to my chamber, and professed he was now as well as ever he was in his life, and did extremely thank me for the great care I had taken of him. I fearing least he might relapse into the like distemper, told him that there was none but my self, and one physician more, in the whole town, that could cure the devils in the head, and that was doctor *Harvey* (whom I had prepared) and wished him, if ever he found himself ill in my absence, to go to him, for he could cure his disease, as well as my self. The gentleman lived many years, and was never troubled here.

Self-denial.

'T is much the doctrine of the times, that men should not please themselves, but deny themselves every thing they take delight in, not look upon beauty, wear no good clothes, eat no good meat, &c. which seems the greatest accusation that can be upon the maker of all good things. If they be not to be used, why did God make them? The truth is, they that preach against them, cannot make use of them their selves, and then again, they get esteem by seeming to condemn them. But mark it while you live, if they do not please themselves as much as they can; and we live more by example than precept.

Duel.

Duel.

1. A DUEL may still be granted in some cases by the law of *England*, and only there. That the church allowed it antiently, appears by this. In their publick liurgies, there were prayers appointed for the duelists to say; the judge used to bid them go to such a church and pray, &c. But whether is this lawful? If you grant any war lawful, I make no doubt but to convince it. War is lawful, because God is the only judge between two that are supream. Now if a difference happen between two subjects, and it cannot be decided by human testimony, why may they not put it to God, to judge between them, by the permission of the prince? Nay, what if we should bring it down, for arguments sake, to the sword-men. One gives me the lye, it is a great disgrace to take it, the law has made no provision to give remedy for the injury, (if you can suppose any thing an injury for which the law gives no remedy) why am not I in this case supream, and may therefore right myself?

2. A duke ought to fight with a gentleman. The reason is this: the gentleman will say to the duke, it is true, you hold a higher place in the state than I, there is a great distance between you and me, but your dignity does not privilege you to do me an injury; as soon as ever you do me an injury, you make your self my equal, and as you are my equal, I challenge you; and in fence the duke is bound to answer him. This will give you some light to understand the quarrel betwixt a prince and his subjects. Though there be a vast distance between him and them, and they are to obey him, according to their contract; yet he hath no power to do them an injury. Then, they think themselves as much bound to vindicate their right, as they are to obey his lawful commands. Nor is there any other measure of justice left upon earth, but arms.

Epitaph.

AN epitaph must be made fit for the person for whom it is made. For a man to say all the excellent things that can be said upon one, and call that his epitaph, is as if a painter should make the handsomest piece he can possibly make, and say it was my picture. It holds in a funeral sermon.

Equity.

1. EQUITY in law is the same that the spirit is in religion, what every one pleases to make it. Sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of court.

2. Equity is a rogish thing. For law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure, a

chancellor's foot. What an uncertain measure would this be? One chancellor has a long foot, another a short foot, a third an indifferent foot: 'Tis the same thing in the chancellor's conscience.

3. That saying, *Do as you would be done to*, is often misunderstood; for it is not thus meant, that I, a private man, should do to you, a private man, as I would have you to me, but do, as we have agreed to do one to another by publick agreement. If the prisoner should ask the judge, whether he would be content to be hanged, were he in his case, he would answer, no. Then says the prisoner, do as you would be done to. Neither of them must do as private men, but the judge must do by him as they have publicly agreed; that is, both judge and prisoner have consented to a law, that if either of them steal, they shall be hanged.

Evil-speaking.

1. HE that speaks ill of another, commonly, before he is aware, makes himself such a one as he speaks against; for if he had civility or breeding, he would forbear such kind of language.

2. A gallant man is above ill words: An example we have in the old lord of *Salisbury*, who was a great wife man. *Stone* had called some lord about court, fool, the lord complains and has *Stone* whipped: *Stone* cries, I might have called my lord of *Salisbury* fool often enough, before he would have had me whipped.

3. Speak not ill of a great enemy, but rather give him good words, that he may use you the better, if you chance to fall into his hands. The *Spaniard* did this when he was dying; his confessor told him, to work him to repentance, how the devil tormented the wicked that went to hell: The *Spaniard* replying, called the devil, my lord, I hope my lord the devil is not so cruel: His confessor reproved him. Excuse me, said the *Don*, for calling him so, I know not into what hands I may fall, and if I happen into his, I hope he will use me the better for giving him good words.

Excommunication.

1. THAT place they bring for excommunication, *put away from among yourselves that wicked person*, 1 Cor. v. 13. is corrupted in the Greek. For it should be, *τὸν ἀνέμω*, put away that evil from among you, not *τὸν ἀνέμω*, that evil person. Besides, *ὁ ἀνέμω* is the devil, in scripture, and it may be so taken there; and there is a new edition of *Theodore* come out, that has it right *τὸν ἀνέμω*. It is true, the christians, before the civil state became christian, did by covenant and agreement set down how they should live; and he that did not observe what they agreed upon, should come no more amongst them; that is, be excommunicated. Such men are spoken of by the apostle, *Romans* j. 31. whom he calls *ἀνέμω* *ἡ ἀνομία*; the vulgar has it, *incompositos*, & *sine facere*; the last word is pretty well, but the first not at all. *Origen*, in

his book against *Celsus*, speaks of the christians *convivæ*, the translation renders it *convivus*, as it signifies a *meeting*, when it is plain it signifies a covenant, and the *English* bible turned the other word well, *covenant-breakers*. *Pliny* tells us, the christians took an oath amongst themselves to live thus, and thus.

2. The other place, *dic ecclesiae*, tell the church, is but a weak ground to raise excommunication upon, especially from the sacrament, the lesser excommunication; since when that was spoken, the sacrament was instituted. The Jews *ecclesia* was their *Sanhedrim*, their court: So that the meaning is, if after once or twice admonition this brother will not be reclaimed, bring him thither.

3. The first excommunication was 180 years after Christ, and that by *Victor*, bishop of *Rome*. But that was no more than this, that they should communicate and receive the sacrament amongst themselves, not with those of the other opinion: The controversy (as I take it) being about the feast of Easter. Men do not care for excommunication because they are shut out of the church, or delivered up to satan, but because the law of the kingdom takes hold of them. After so many days a man cannot sue, no, not for his wife, if you take her from him. And there may be as much reason to grant it for a small fault, if there be contumacy, as for a great one. In *Westminster-hall* you may outlaw a man for forty shillings, which is their excommunication, and you can do no more for forty thousand pounds.

4. When *Constantine* became christian, he so fell in love with the clergy, that he let them be judges of all things; but that continued not above three or four years, by reason they were to be judges of matters they understood not, and then they were allowed to meddle with nothing but religion. All jurisdiction belonged to him, and he scanted them out as much as he pleased, and so things have since continued. They excommunicate for three or four things, matters concerning adultery, tythes, wills, &c. which is the civil punishment the state allows for such faults. If a bishop excommunicate a man for what he ought not, the judge has power to absolve, and punish the bishop. If they had that jurisdiction from God, why does not the church excommunicate for murder, for theft? If the civil power might take away all but three things, why may they not take them away too? If this excommunication were taken away, the presbyters would be quiet; 'tis that they have a mind to, 'tis that they would fain be at. Like the wench that was to be married; she asked her mother when 'twas done, if she should go to bed presently? No, says her mother, you must dine first; and then to bed mother? No, you must dance after dinner; and then to bed mother? No, you must go to supper; and then to bed mother? &c.

Faith and Works.

'Twas an unhappy division that has been made between faith and works. Though in my

intellect I may divide them, just as in the candle, I know there is both light and heat. But yet put out the candle, and they are both gone. One remains not without the other. So 'tis betwixt faith and works. Nay, in a right conception, *fides est opus*. If I believe a thing, because I am commanded, that is *opus*.

Fasting-days.

1. WHAT the church debars us one day, she gives us leave to take out in another. First we fast, and then we feast: First there is a carnival, and then a lent.

2. Whether do human laws bind the conscience? If they do, 'tis a way to enslave: If we say they do not, we open the door to disobedience.

Ans. In this case we must look to the justice of the law, and intention of the law-giver. If there be no justice in the law, 'tis not to be obeyed; if the intention of the law-giver be absolute, our obedience must be so too. If the intention of the law-giver enjoin a penalty as a compensation for the breach of the law, I sin not, if I submit to the penalty; if it enjoin a penalty, as a further enforcement of obedience to the law, then ought I to observe it; which may be known by the often repetition of the law. The way of fasting is enjoined unto them, who yet do not observe it. The law enjoins a penalty as an enforcement to obedience; which intention appears by the often calling upon us to keep that law, by the king, and the dispensation of the church to such as are not able to keep it, as young children, old folks, diseased men, &c.

Fathers and sons.

It hath ever been the way for fathers to bind their sons. To strengthen this by the law of the land, every one, at twelve years of age, is to take the oath of allegiance in court-leets, whereby he swears obedience to the king.

Fines.

THE old law was, that when a man was fined, he was to be fined *salvo contentamento*, so as his countenance might be safe, taking countenance in the same sense as your country-man does, when he says, If you will come unto my house, I will shew you the best countenance I can, that is, not the best face, but the best entertainment. The meaning of the law was, that so much should be taken from a man, such a gobbet sliced off, that yet notwithstanding he might live in the same rank and condition he lived in before: But now they fine men ten times more than they are worth.

Free-will.

THE Puritans who will allow no free-will at all, but God does all, yet will allow the subject his liberty to do, or not to do, notwithstanding the king, the god upon earth. The *Arminians*, who hold we have free will, yet say, when we come to the king, there must be all obedience, and no liberty to be stood for.

Fryers.

Fryers.

1. THE fryers say they possess nothing; Whose then are the lands they hold? Not their superiors, he hath vowed poverty as well as they. Whose then? To answer this, it was decreed, they should say, they were the pope's. And why must the fryers be more perfect than the pope himself?

2. If there had been no fryers, christendom might have continued quiet, and things remained at a stay.

3. If there had been no lecturers, who succeed the fryers in their way, the church of England might have stood, and flourished at this day.

Friends.

OLD friends are best. King James used to call for his old shoes; they were easiest for his feet.

Genealogy of Christ.

1. THEY that say, the reason why *Joseph's* pedigree is set down, and not *Mary's*, is, because the descent from the mother is lost, and swallowed up, say something; But yet if a *Jewish* woman, married with a *Gentile*, they only took notice of the mother, not of the father. But they that say they were both of a tribe, say nothing: For the tribes might marry one with another, and the law against it was only temporary, in the time while *Joshua* was dividing the land, left the being so long about it, there might be a confusion.

2. That Christ was the son of *Joseph* is most exactly true. For though he was the son of God, yet with the *Jews*, if any man kept a child, and brought him up, and called him son, he was taken for his son; and his land (if he had any) was to descend upon him; and therefore the genealogy of *Joseph* is justly set down.

Gentlemen.

1. WHAT a gentleman is, is hard with us to define. In other countries he is known by his privileges; in *Westminster-hall* he is one that is reputed one; in the court of honour, he that hath arms. The king cannot make a gentleman of blood. What have you said? Nor God almighty, but he can make a gentleman by creation. If you ask which is the better of these two, civilly, the gentleman of blood, morally, the gentleman by creation may be the better; for the other may be a debauched man, this a person of worth.

2. Gentlemen have ever been more temperate in their religion, than the common people, as having more reason, the others running in a hurry. In the beginning of christianity, the fathers writ *contra gentes*, and *contra gentiles*, they were all one: But after all were christians, the better sort of people still retained the name of *Gentiles*, throughout the four provinces of the Roman empire; as *gentil-homme* in French, *gentil-huomo* in Italian, *gentil-huombre* in Spanish, and *gentil-man* in English: And they, no question, being persons of quality, kept up

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those feasts which we borrow from the *Gentiles*: as *Christmas*, *Candlemas*, *May-day*, &c. continuing what was not directly against christianity, which the common people would never have endured.

Gold.

THERE are two reasons why these words, *Jesus autem transiens per medium eorum ibat*, were about our old gold. The one is, because *Ripley* the alchymist, when he made gold in the *Tower*, the first time he found it, he spoke these words, *per medium eorum*, that is, *per medium ignis, & sulphuris*. The other, because these words were thought to be a charm, and that they did bind whatsoever they were written upon, so that a man could not take it away. To this reason I rather incline.

Hall.

THE hall was the place where the great lord used to eat, wherefore else were the halls made so big? where he saw all his servants and tenants about him. He eat not in private, except in time of sickness; when once he became a thing cooped up, all his greatness was spoiled. Nay the king himself used to eat in the hall, and his lords sat with him, and then he understood men.

Hell.

1. THERE are two texts for Christ's descending into hell; the one, *Psalm*. xvj. the other, *Acts* ij. where the bible, that was in use when the thirty-nine articles were made, has it *hell*. But the bible that was in queen *Elizabeth's* time, when the articles were confirmed, reads it *grave*, and so it continued till the new translation in king *James's* time, and then 'tis *hell* again. But by this we may gather the church of England declined, as much as they could, the descent, otherwise they never would have altered the bible.

2. He descended into *hell*. This may be the interpretation of it. He may be dead and buried, then his soul ascended into *heaven*. Afterwards he descended again into *hell*, that is, into the *grave*, to fetch his body, and to rise again. The ground of this interpretation is taken from the *Platonick* learning, who held a *metempsychosis*, and when a soul did descend from heaven to take another body, they called it *πενεσις* taking *αἰών*, for the lower world, the state of mortality? Now the first Christians, many of them, were *Platonick* philosophers, and no question spoke such language as then was understood amongst them. To understand by *hell*, the *grave*, is no tautology, because the creed first tells what Christ suffered, *He was crucified, dead, and buried*; then it tells us what he did, *he descended into hell, the third day he rose again, he ascended, &c.*

Holy-days.

THEY say the church imposes holy-days. There's no such thing, though the number of holy-days is set down in some of our common

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prayer

prayer books. Yet that has relation to an act of parliament, which forbids the keeping of any holy-days in time of popery. But those that are kept, are kept by the custom of the country, and I hope you will not say the church imposes that.

Humility.

1. HUMILITY is a virtue all preach, none practise, and yet every body is content to hear. The master thinks it good doctrine for his servant, the laity for the clergy, and the clergy for the laity.

2. There is *humilitas quaedam in vitio*. If a man does not take notice of that excellency and perfection that is in himself, how can he be thankful to God, who is the author of all excellency and perfection? Nay, if a man hath too mean an opinion of himself, it will render him unserviceable both to God and man.

3. Pride may be allowed to this or that degree, else a man cannot keep up his dignity. In gluttons there must be eating, in drunkards there must be drinking; it is not the eating, nor it is not the drinking, that is to be blamed, but the excess. So in pride.

Idolatry.

IDOLATRY is in a man's own thought, not in the opinion of another. Put case I bow to the altar, why am I guilty of idolatry? Because a stander-by thinks so? I am sure I do not believe the altar to be God, and the God I worship may be bowed to in all places, and at all times.

Jews.

1. GOD at the first gave laws to all mankind, but afterwards he gave peculiar laws to the *Jews*, which they were only to observe. Just as we have the common law for all *England*, and yet you have some corporations, that, besides that, have peculiar laws and privileges to themselves.

2. Talk what you will of the *Jews*, that they are cursed, they thrive where ever they come; they are able to oblige the prince of their country by lending him money; none of them beg; they keep together; and for their being hated; my life for yours, christians hate one another as much.

Invincible ignorance.

'TIS all one to me, if I am told of Christ, or some mystery of christianity, if I am not capable of understanding, as if I am not told at all, my ignorance is as invincible, and therefore it is vain to call their ignorance only invincible, who never were told of Christ. The trick of it is to advance the priest, whilst the church of *Rome* says a man must be told of Christ, by one thus and thus ordained.

Images.

1. THE papists taking away the second commandment, is not haply so horrid a thing, nor so unreasonable amongst christians as we make it. For the *Jews* could make no figure of God but they must commit idolatry, because he had taken no shape; but since the assumption of our flesh, we know what shape to picture God in. Nor do I know why we may not make his image, provided we be sure what it is: As we say *St. Luke* took the picture of the virgin *Mary*, and *St. Veronica* of our Saviour. Otherwise it would be no honour to the king, to make a picture, and call it the king's picture, when 'tis nothing like him.

2. Though the learned papists pray not to images, yet 'tis to be feared the ignorant do; as appears by that story of *St. Nicholas* in *Spain*. A country-man used to offer daily to *St. Nicholas's* image, at length by mischance the image was broken, and a new one made of his own plumb-tree; after that the man forbore; Being complained of to his ordinary, he answered, 'tis true, he used to offer to the old image, but to the new he could not find in his heart, because he knew it was a piece of his own plumb-tree. You see what opinion this man had of the image, and to this tended the bowing of their images, the twinkling of their eyes, the virgin's milk, &c. Had they only meant representations, a picture would have done as well as these tricks. It may be with us in *England* they do not worship images, because living among protestants, they are either laughed out of it, or beaten out of it by shock of argument.

3. 'TIS a discreet way concerning pictures in churches, to set up no new, nor to pull down no old.

Imperial constitutions.

THEY say imperial constitutions did only confirm the canons of the church, but that is not so, for they inflicted punishment, when the canons never did. If a man converted a *Christian* to be a *Jew*, he was to forfeit his estate, and lose his life. In *Valentinian's* novels, 'tis said, *Constat episcopos forum legibus non habere, & judicium tantum de religione*.

Imprisonment.

SIR *Kenelm Digby* was several times taken and let go again, at last imprisoned in *Winchester-house*. I can compare him to nothing, but a great fish that we catch and let go again, but still he will come to the bait; at last therefore we put him into some great pond for store.

Incendiaries.

FANCY to yourself a man sets the city on fire at *Cripplegate*, and that fire continues by means of others, 'till it come to *White-Fryers*, and then he that began it would fain quench it, does

does not he deserve to be punished most that first set the city on fire? So 'tis with the incendiaries of the state. They that first set it on fire, by monopolizing, forest business, imprisoning parliament men, *tertio Caroli*, &c. are now become regenerate, and would fain quench the fire. Certainly they deserved most to be punished, for being the first cause of our distractions.

Independency.

1. INDEPENDENCY is in use at *Amsterdam*, where forty churches or congregations have nothing to do one with another. And 'tis, no question, agreeable to the primitive times, before the emperor became christian. For either we must say, every church governed itself, or else we must fall upon that old foolish rock, that St. *Peter* and his successors governed all. But when the civil state became christian, they appointed who should govern them; before they governed by agreement and consent; if you will do this, you shall come no more amongst us. But both the independent man, and the presbyterian man do equally exclude the civil power, though after a different manner.

2. The independents may as well plead, they should not be subject to temporal things, not come before a constable, or a justice of peace, as they plead they should not be subject in spiritual things, because St. *Paul* says, *Is it so, that there is not a wise man amongst you?*

3. The pope challenges all churches to be under him. The king and the two archbishops challenge all the church of *England* to be under them. The presbyterian man divides the kingdom into as many churches as there be presbyteries. And your independent would have every congregation a church by it self.

Things indifferent.

IN time of a parliament, when things are under debate, they are indifferent; but in a church or state settled, there is nothing left indifferent.

Publick interest.

ALL might go well in the common-wealth, if every one in the parliament would lay down his own interest, and aim at the general good. If a man were sick, and the whole college of physicians should come to him, and administer severally, haply so long as they observed the rules of art, he might recover; But if one of them had a great deal of scamony by him, he must put off that, therefore he prescribes scamony; another had a great deal of rhubarb, and he must put off that, and therefore he prescribes rhubarb, &c. they would certainly kill the man. We destroy the common-wealth, while we preserve our own private interests, and neglect the publick.

Human invention.

1. YOU say there must be no human invention in the church, nothing but the pure word. *Answer.* If I give any exposition, but what is expressed in the text, that is my invention:

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If you give another exposition, that is your invention, and both are human. For example, suppose the word *egg* were in the text, I say, 'tis meant an *hen-egg*, you say a *goose-egg*, neither of these are expressed, therefore they are human invention; And I am sure the newer the invention the worse; old inventions are best.

2. If we must admit nothing, but what we read in the bible, what will become of the parliament? For we do not read of that there.

Judgments.

WE cannot tell what is a judgment of God; 'tis presumption to take upon us to know. In time of plague, we know we want health, and therefore we pray to God to give us health; in time of war, we know we want peace, and therefore we pray to God to give us peace. Commonly we say a judgment falls upon a man for something in him we cannot abide. An example we have in king *James*, concerning the death of *Henry IV. of France*; one said he was killed for his wenching, another said he was killed for turning his religion. No, says king *James*, (who could not abide fighting) he was killed for permitting duels in his kingdom.

Judge.

1. WE see the pageants in *Cheapside*, the lions, and the elephants, but we do not see the men that carry them. We see the judges look big, look like lions, but we do not see who moves them.

2. Little things do great works, when great things will not. If I should take a pin from the ground, a little pair of tongues will do it, when a great pair will not. Go to a judge to do a business for you, by no means he will not hear of it; but go to some small servant about him, and he will dispatch it according to your heart's desire.

3. There could be no mischief done in the common-wealth without a judge. Though there be false dice brought in at the groom-porter's, and cheating offered, yet unless he allow the cheating, and judge the dice to be good, there may be hopes of fair play.

Juggling.

'Tis not juggling that is to be blamed, but much juggling, for the world cannot be governed without it. All your rhetoric, and all your elenchs in logic come within the compals of juggling.

Jurisdiction.

1. THERE'S no such thing as spiritual jurisdiction; all is civil, the church's is the same with the lord mayor's. Suppose a christian came into a pagan country, how can you fancy he shall have power there? He finds faults with the gods of the country. Well, they will put him to death for it. When he is a martyr, what follows? Does that argue he has any spiritual jurisdiction? If the clergy say the church ought

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to be governed thus, and thus, by the word of God, that is doctrine all, that is not discipline.

2. The pope, he challenges jurisdiction over all, the bishops, they pretend to it as well as he, the presbyterians, they would have it to themselves; but over whom is all this? The poor lay-men.

Jus divinum.

1. ALL things are held by *jus divinum*, either immediately, or mediately.

2. Nothing has lost the pope so much in his supremacy, as not acknowledging what princes gave him. 'Tis a scorn upon the civil power, and an unthankfulness in the priest: But the church runs to *jus divinum*, lest if they should acknowledge what they have, they have by positive law, it might be as well taken from them, as given to them.

King.

1. A KING is a thing men have made for their own sakes, for quietness sake. Just as in a family one man is appointed to buy the meat: If every man should buy, or if there were many buyers, they would never agree; One would buy what the other liked not, or what the other had bought before, so there would be a confusion. But that charge being committed to one, he according to his discretion pleases all. If they have not what they would have, one day, they shall have it the next, or something as good.

2. The word king directs our eyes. Suppose it had been consul, or dictator. To think all kings alike, is the same folly, as if a consul of *Aleppo*, or *Smyrna*, should claim to himself the same power that a consul at *Rome*. What, am not I consul? Or a duke of *England* should think himself like the duke of *Florence*. Nor can it be imagined, that the word *Exarchus* did signify the same in *Greek*, as the *Hebrew* word *רִבִּי* did with the *Jews*. Besides, let the divines in their pulpits say what they will, they in their practice deny, that all is the kings. They sue him, and so does all the nation, whereof they are a part. What matter is it then, what they preach or teach in the schools?

3. Kings are all individual, this or that king; there is no species of kings.

4. A king that claims privileges in his own country, because they have them in another, is just as a cook, that claims fees in one lord's house, because they are allowed in another. If the master of the house will yield them, well and good.

5. The text, *Render unto Caesar the things that are Caesar's*, makes as much against kings, as for them; for it says plainly that some things are not *Caesar's*. But divines make choice of it, first in slattery, and then because of the other part adjoined to it, *render unto God the things that are God's*, where they bring in the church.

6. A king outed of his country, that takes as much upon him as he did at home in his own court, is as if a man on high, and I being upon the ground, used to lift up my voice to him, that he might hear me, at length should come down, and then expects I should speak as loud to him as I did before.

King of England.

1. THE king can do no wrong, that is, no process can be granted against him. What must be done then? Petition him, and the king writes upon the petition, *fait droit fait*, and sends it to the chancery, and then the business is heard. His confessor will not tell him he can do no wrong.

2. There's a great deal of difference between head of the church, and supreme governor, as our canons call the king. Conceive it thus; There is in the kingdom of *England* a college of physicians, the king is supreme governor of those, but not head of them, nor president of the college, nor the best physician.

3. After the dissolution of abbies, they did not much advance the king's supremacy, for they only cared to exclude the pope: Hence have we had several translations of the bible put upon us. But now we must look to it, otherwise the king may put upon us what religion he pleases.

4. 'Twas the old way when the king of *England* had his house, there were canons to sing service in his chapel: So at *Westminster*, in *St. Stephen's* chapel, (where the house of commons sits) from which canons the street called *Canon-row* has its name, because they lived there; and he had also the abbot and his monks, and all these the king's house.

5. The three estates are the lords temporal, the bishops for the clergy, and the commons, as some would have it. Take heed of that; for then if two agree, the third is involved, but he is king of the three estates.

6. The king hath a seal in every court, and though the great seal be called *sigillum Angliae*, the great seal of *England*, yet 'tis not because 'tis the kingdom's seal, and not the king's, but to distinguish it from *sigillum Hiberniae* *sigillum Scotiae*.

7. The court of *England* is much altered. At a solemn dancing, first you had the grave measures, then the corantoes and the galliards, and this is kept up with ceremony, at length to *French-more*, and the cushion dance, and then all the company dance, lord and groom, lady and kitchen-maid, no distinction. So in our court in queen *Elizabeth's* time, gravity and state were kept up; in king *James's* time things were pretty well; but in king *Charles's* time, there has been nothing but *French-more* and the cushion dance, *omnium gatherum*, tolly polly, *boite come toite*.

The king.

1. 'Tis hard to make an accommodation between the king and the parliament. If you and I fell out about money, you said I owed you twenty pounds, I said I owed you but ten pounds, it may be a third party allowing me twenty marks, might make us friends. But if I said, I owed you twenty pounds in silver, and you said I owed you twenty pounds of diamonds, which is a sum innumerable, 'tis impossible we should ever agree; this is the case.

2. The king using the house of commons, as he did in Mr. *Pym* and his company, that is, charging them with treason, because they charged my lord of *Canterbury* and Sir *George Ratcliffe*, it was just with as much logick as the boy, that would have lain with his grandmother, used to his father: You lay with my mother, why should not I lye with your's?

3. There is not the same reason for the king's accusing men of treason, and carrying them away, as there is for the houses themselves, because they accuse one of themselves. For every one that is accused, is either a peer or a commoner; and he that is accused hath his consent going along with him; but if the king accuses, there is nothing of this in it.

4. The king is equally abused now as before; then they flattered him, and made him do ill things, now they would force him against his conscience. If a physician should tell me every thing I had a mind to was good for me, tho' in truth 'twas poison, he abused me: And he abuses me as much, that would force me to take something whether I will or no.

5. The king, so long as he is our king, may do with his officers what he pleases; as the master of the house may turn away all his servants, and take whom he pleases.

6. The king's oath is not security enough for our property, for he swears to govern according to law; now the judges they interpret the law; and what judges can be made to do, we know.

7. The king and the parliament now falling out, are just as when there is foul play offered amongst gamesters, one snatches the other's stake, they seize what they can of one another's. 'Tis not to be asked, whether it belongs not to the king to do this or that: Before, when there was fair play, it did, but now they will do what is most convenient for their own safety. If two fall to scuffling, one tears the other's band, the other tears his; when they were friends they were quiet, and did no such thing; they let one another's bands alone.

8. The king calling his friends from the parliament, because he had use of them at *Oxford*, is as if a man should have use of a little piece of wood, and he runs down into the cellar, and takes the spigot, in the mean time all the beer runs about the house: When his friends are absent, the king will be lost.

VOL. III.

Knight's service.

KNIGHT's service in earnest means nothing, for the lords are bound to wait upon the king when he goes to war with a foreign enemy; with, it may be, one man and one horse; and he that doth not, is to be rated so much as shall seem good to the next parliament. And what will that be? So 'tis for a private man, that holds of a gentleman.

Land.

1. WHEN men did let their land under foot; the tenants would fight for their landlords, so that way they had their retribution; but now they will do nothing for them, nay, be the first, if but a constable bid them, that shall lay the landlord by the heels; and therefore 'tis vanity and folly not to take the full value.

2. *Allodium* is a law-word contrary to *feudum*, and it signifies land that holds of no body. We have no such land in *England*. 'Tis a true proposition, all the land in *England* is held either immediately, or mediately of the king.

Language.

1. To a living tongue new words may be added, but not to a dead tongue, as *Latin*, *Greek*, *Hebrew*, &c.

2. *Latimer* is the corruption of *latiner*, it signifies he that interprets *Latin*, and though he interpreted *French*, *Spanish*, or *Italian*, he was called the king's *latiner*, that is, the king's interpreter.

3. If you look upon the language spoken in the *Saxon* time, and the language spoken now, you will find the difference to be just, as if a man had a cloke that he wore plain in queen *Elizabeth's* days, and since, here has put in a piece of red, and there a piece of blue, and here a piece of green, and there a piece of orange-tawny. We borrow words from the *French*, *Italian*, *Latin*, as every pedantick man pleases.

4. We have more words than notions, half a dozen words for the same thing. Sometimes we put a new signification to an old word, as when we call a *piece*, a *gun*. The word *gun* was in use in *England* for an engine to cast a thing from a man, long before there was any gun-powder found out.

5. Words must be fitted to a man's mouth. 'Twas well said of the fellow that was to make a speech for my lord mayor, he desired to take measure of his lordship's mouth.

Law.

1. A MAN may plead not guilty, and yet tell no lye, for by the law no man is bound to accuse himself: So that when I say, not guilty, the meaning is, as if I should lay by way of paraphrase, I am not so guilty as to tell you; if you will bring me to a trial, and have me punished

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punished for this you lay to my charge, prove it against me.

2. Ignorance of the law excuses no man, not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.

3. The king of *Spain* was out-lawed in *Westminster-hall*, I being of council against him. A merchant had recovered costs against him in a suit, which because he could not get, we advised to have him out-lawed for not appearing, and so he was. As soon as *Gondomar* heard that, he presently sent the money, by reason, if his master had been out-law'd, he could not have the benefit of the law, which would have been very prejudicial, there being then many suits depending betwixt the king of *Spain* and our *English* merchants.

4. Every law is a contract between the king and the people, and therefore to be kept. An hundred men may owe me an hundred pounds, as well as any one man, and shall they not pay me because they are stronger than I?

Object. Oh but they lose all if they keep that law.

Answer. Let them look to the making of their bargain. If I sell my lands, and when I have done, one comes and tells me I have nothing else to keep me. I and my wife and children must starve, if I part with my land. Must I not therefore let them have my land that have bought it, and paid for it?

5. The parliament may declare law, as well as any other inferior court may, *viz.* the king's bench. In that or this particular case the king's bench will declare unto you what the law is, but that binds no body whom the case concerns: So the highest court, the parliament, may do, but not declare law, that is, make law that was never heard of before.

Law of nature.

I CANNOT fancy to myself what the law of nature means, but the law of God. How should I know I ought not to steal, I ought not to commit adultery, unless some body had told me so? Surely 'tis because I have been told so, 'Tis not because I think I ought not to do them, nor because you think I ought not; if so, our minds might change: Whence then comes the restraint? From a higher power, nothing else can bind. I cannot bind myself, for I may untie myself again; nor an equal cannot bind me, for we may untie one another. It must be a superior power, even God Almighty. If two of us make a bargain, why should either of us stand to it? What need you care what you say, or what need I care what I say? Certainly because there is something about me that tells me, *fides est servanda*, and if we after alter our minds, and make a new bargain, there is *fides servanda* there too.

Learning.

1. No man is the wiser for his learning; it may administer matter to work in, or objects

to work upon, but wit and wisdom are born with a man.

2. Most men's learning is nothing but history duly taken up. If I quote *Thomas Aquinas* for some tenet, and believe it, because the school-men say so, that is but history. Few men make themselves masters of the things they write or speak.

3. The Jesuites and the lawyers of *France*, and the *Low-country* men, have engrossed all learning. The rest of the world make nothing but homilies.

4. 'Tis observable, that in *Athens* where the arts flourished, they were governed by a democracy; learning made them think themselves as wise as any body, and they would govern as well as others; and they spoke, as it were by way of contempt, that in the east and in the north they had kings. And why? Because the most part of them followed their business; and if some one man had made himself wiser than the rest, he governed them, and they willingly submitted themselves to him. *Aristotle* makes the observation. And as in *Athens*, the philosophers made the people knowing, and therefore they thought themselves wise enough to govern, so does preaching with us, and that makes us affect a democracy; for upon these two grounds we all would be governors; either because we think our selves as wise as the best, or because we think our selves the elect, and have the spirit, and the rest a company of reprobates that belong to the devil.

Lecturers.

1. LECTURERS do in a parish church what the fryers did heretofore, get away not only the affections, but the bounty, that should be bestowed upon the minister.

2. Lecturers get a great deal of money, because they preach the people tame; as a man watches a hawk, and then they do what they list with them.

3. The lectures in *Black-fryers*, performed by officers of the army, trades-men, and ministers, is as if a great lord should make a feast, and he would have his cook dress one dish, and his coach-man another, his porter a third, &c.

Libels.

Tho' some make slight of libels, yet you may see by them how the wind sits. As take a straw and throw it up into the air, you shall see by that which way the wind is, which you shall not do by casting up a stone. More solid things do not shew the complexion of the times so well as ballads and libels.

Liturgy.

1. THERE is no church without a liturgy, nor indeed can there be conveniently, as there is no school without a grammar. One scholar may be taught otherwise upon the flock of his *acumen*, but not a whole school. One or two that

that are piously disposed, may serve themselves their own way, but hardly a whole nation.

2. To know what was generally believed in all ages, the way is to consult the liturgies, not any private man's writing. As if you would know how the church of *England* serves God. Go to the common prayer-book, consult not this, nor that man. Besides, liturgies never complement, nor use high expressions. The fathers oft-times speak oratoriously.

Lords in the parliament.

1. THE lords giving protections is a scorn upon them. A protection means nothing actively, but passively. He that is a servant to a parliament-man is thereby protected. What a scorn is it to a person of honour to put his hand to two lyes at once, that such a man is my servant, and employed by me, when haply he never saw the man in his life, nor before never heard of him?

2. The lords protesting is foolish. To protest is properly to save to a man's self some right. But to protest as the lords protest, when they their selves are involved; 'tis no more than if I should go into *Smithfield*, and sell my horse, and take the money; and yet when I have your money, and you my horse, I should protest this horse is mine, because I love the horse, or I do not know why. I do protest, because my opinion is contrary to the rest. Ridiculous, when they say the bishops did antiently protest, it was only dissenting, and that in the case of the pope.

Lords before the parliament.

1. GREAT lords, by reason of their statuters, are the first that know their own virtues, and the last that know their own vices. Some of them are ashamed upwards, because their ancestors were too great. Others are ashamed downwards, because they were too little.

2. The prior of *St. John of Jerusalem* is said to be *primus baro Angliæ*, the first baron of *England*, because being last of the spiritual barons, he chose to be first of the temporal. He was a kind of an otter, a knight half spiritual, and half temporal.

3. *Quest.* Whether is every baron a baron of some place?

Answer. 'Tis according to his patent. Of late years they have been made baron of some place, but antiently not, called only by their sur-name, or the sur-name of some family, into which they have been married.

4. The making of new lords lessens all the rest. 'Tis in the business of lords, as 'twas with *St. Nicholas's* image: the country-man, you know, could not find in his heart to adore the new image, made of his own plumb-tree, though he had formerly worshipped the old one. The lords that are antient, we honour, because we know not whence they come; but the new ones we slight, because we know their beginning.

5. For the *Irish* lords to take upon them here in *England*, is as if the cook in the fair should

come to my lady *Kent's* kitchen, and take upon him to roast the meat there, because he is a cook in another place.

Marriage.

1. OF all actions of a man's life, his marriage does least concern other people; yet of all actions of our life, 'tis most meddled with by other people.

2. Marriage is nothing but a civil contract. 'Tis true 'tis an ordinance of God; so is every other contract; God commands me to keep it, when I have made it.

3. Marriage is a desperate thing. The frogs in *Esop* were extreme wise, they had a great mind to some water, but they would not leap into the well, because they could not get out again.

4. We single out particulars, and apply God's providence to them. Thus when two are married, and have undone one another, they cry it was God's providence we should come together, when God's providence does equally concur to every thing.

Marriage of cousin-germans.

SOME men forbear to marry cousin-germans out of this kind of scruple of conscience, because it was unlawful before the reformation, and is still in the church of *Rome*. And so by reason their grandfather, or their great grandfather did not do it, upon that old score they think they ought not to do it; as some men forbear flesh upon *Friday*, not reflecting upon the statute, which with us makes it unlawful, but out of an old score, because the church of *Rome* forbids it, and their fore-fathers always forbore flesh upon that day. Others forbear it out of a natural consideration, because it is observed (for example) in beasts, if two couple of a near kind, the breed proves not so good: The same observation they make in plants and trees, which degenerate, being grafted upon the same stock. And 'tis also farther observed, those matches between cousin-germans seldom prove fortunate. But for the lawfulness there is no colour, but cousin-germans in *England* may marry, both by the law of God and man: For with us we have reduced all the degrees of marriage to those in the *Levitical* law, and 'tis plain there is nothing against it. As for that that is said, cousin-germans once removed may not marry, and therefore, being a further degree may not, 'tis presumed a nearer should not, no man can tell what it means.

Measure of things.

1. WE measure from our selves, and as things are for our use and purpose, so we approve them. Bring a pear to the table that is rotten, we cry it down, 'tis naught; but bring a medlar that is rotten, and 'tis a fine thing; and yet I'll warrant you, the pear thinks as well of it self, as the medlar does.

2. We

2. We measure the excellency of other men, by some excellency we conceive to be in our selves. *Nash*, a poet poor enough (as poets used to be) seeing an alderman with his gold chain, upon his great horse, by way of scorn said to one of his companions, *Do you see yon fellow, how goodly, how big he looks? why that fellow cannot make a blank verse.*

3. Nay, we measure the goodness of God from our selves. We measure his goodness, his justice, his wisdom, by something we call just, good, or wise in our selves; and in so doing, we judge proportionably to the country-fellow in the play, who said if he were a king, he would live like a lord, and have peace and bacon every day, and a whip that cryed *flash*.

Difference of men.

THE difference of men is very great. You would scarce think them to be of the same species, and yet it consists more in the affection, than in the intellect. For as in the strength of body, two men shall be of an equal strength, yet one shall appear stronger than the other, because he exercises, and puts out his strength, the other will not stir nor strain himself. So 'tis in the strength of the brain; the one endeavours, and strains, and labours, and studies, the other sits still, and is idle, and takes no pains, and and therefore he appears so much the inferior.

Minister divine.

1. THE imposition of hands upon the minister, when all is done, will be nothing but a designation of a person to this or that office or employment in the church. 'Tis a ridiculous phrase that of the canonists, *conferre ordines*, 'tis *coaptare aliquem in ordinem*, to make a man one of us, one of our number, one of our order. So *Cicero* would understand what I said, it being a phrase borrowed from the *Latins*, and to be understood proportionably to what was amongst them.

2. Those words you now use in making a minister, *receive the holy Ghost*, were used among the *Jews* in making of a lawyer; from thence we have them, which is a villainous key to something; as if you would have some other kind of praefecture, than a mayoralty, and yet keep the same ceremony that was used in making the mayor.

3. A priest has no such thing as an indelible character. What difference do you find betwixt him and another man after ordination? Only he is made a priest (as I said) by designation; as a lawyer is called to the bar, then made a serjeant. All men that would get power over others, make themselves as unlike them as they can; upon the same ground the priests made themselves unlike the laity.

4. A minister when he is made, is *materia prima*, apt for any form the state will put upon him; but of himself he can do nothing. Like a doctor of law in the university, he hath a great deal of law in him, but cannot use it till

he be made some body's chancellor: Or like a physician, before he be received into a house, he can give no body physick; indeed after the master of the house hath given him charge of his servants, then he may. Or like a sutfragan, that could do nothing but give orders, and yet he was no bishop.

5. A minister should preach according to the articles of religion established in the church where he is. To be a civil lawyer, let a man read *Justinian*, and the body of the law, to confirm his brain to that way; but when he comes to practise, he must make use of it so far as it concerns the law received in his own country. To be a physician, let a man read *Galen* and *Hippocrates*; but when he practises, he must apply his medicines according to the temper of those men's bodies with whom he lives, and have respect to the heat and cold of climates, otherwise that which in *Pergamus* (where *Galen* lived) was physick, in our cold climate may be poison. So to be a divine, let him read the whole body of divinity, the fathers and the school-men; but when he comes to practise, he must use it and apply it according to those grounds and articles of religion that are established in the church, and this with sense.

6. There be four things a minister should be at, the consistory part, ecclesiastical story, school divinity, and the casuists.

1. In the consistory part, he must read all the chief fathers, both *Latin* and *Greek*, wholly, *St. Austin*, *St. Ambrose*. *St. Chrysostom*, both the *Gregories*, &c. *Tertullian*, *Clement Alexandrinus*, and *Epiphanius*, which last have more learning in them than all the rest, and wrote freely.

2. For ecclesiastical story, let him read *Baronius*, with the *Magdeburgenses*, and be his own judge; the one being extremely for the papists, the other extremely against them.

3. For school divinity, let him get *Javelus*'s edition of *Scotus* or *Major*, where there be quotations that direct you to every school-man, where such and such questions are handled. Without school divinity, a divine knows nothing logically, nor will be able to satisfy a rational man out of the pulpit.

4. The study of the casuists must follow the study of the school-men, because the division of their cases is according to their divinity, otherwise he that begins with them will know little. As he that begins with the study of the reports and cases in the common law, will thereby know little of the law. Casuists may be of admirable use, if discreetly dealt with, tho' among them you shall have many leaves together very impertinent. A case well decided would stick by a man, they would remember it whether they will or no, whereas a quaint position dieth in the birth. The main thing is to know where to search, for talk what they will of vast memories, no man will presume upon his own memory for any thing he means to write or speak in publick.

7. *Go and teach all nations*. This was said to all christians that then were, before the distinction

inction of clergy and laity ; there have been since men designed to preach only by the state, as some men are designed to study the law, others to study physick. When the Lord's supper was instituted, there were none present but the disciples. Shall none then but ministers receive ?

8. There is all the reason you should believe your minister, unless you have studied divinity as well as he, or more than he.

9. 'Tis a foolish thing to say a minister must not meddle with secular matters, because his own profession will take up the whole man ; May he not eat, or drink, or walk, or learn to sing ? The meaning of that is, he must seriously attend his calling.

10. Ministers with the papists, that is, their priests, have much respect ; with the puritans they have much, and that upon the same ground they pretend both of them to come immediately from Christ ; but with the protestants they have very little ; the reason wherof is ; In the beginning of the reformation they were glad to get such to take livings as they could procure by any invitations, things of pitiful condition. The nobility and gentry would not suffer their sons or kindred to meddle with the church, and therefore at this day, when they see a parson, they think him to be such a thing still, and there they will keep him, and use him accordingly ; if he be a gentleman, that is singled out, and he is used the more respectfully.

11. That the protestant minister is least regarded, appears by the old story of the keeper of the *Clink*. He had priests of several sorts sent unto him ; as they came in, he asked them who they were ; Who are you, to the first ? I am a priest of the church of *Rome*. You are welcome quoth the keeper, there are those will take care of you. And who are you ? A silenced minister. You are welcome too, I shall fare the better for you. And who are you ? A minister of the church of *England*. O God help me (quoth the keeper) I shall get nothing by you, I am sure you may lye and starve, and rot, before any body will look after you.

12. Methinks 'tis an ignorant thing for a church-man to call himself the minister of Christ, because *St. Paul*, or the apostles called themselves so. If one of them had a voice from heaven, as *St. Paul* had, I will grant he is a minister of Christ, I will call him so too. Must they take upon them as the apostles did ? Can they do as the apostles could ? The apostles had a mark to be known by, spoke tongues, cured diseases, trod upon serpents, &c. Can they do this ? If a gentleman tells me, he will send his man to me, and I did not know his man, but he gave me this mark to know him by, he should bring in his hand a rich jewel ; if a fellow came to me with a pebble-stone, had I any reason to believe he was the gentleman's man ?

Money.

1. MONEY makes a man laugh. A blind fidler playing to a company, and playing but
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scurvily, the company laughed at him ; his boy that led him, perceiving it, cryed, *Father let us be gone, they do nothing but laugh at you. Hold thy peace, boy*, said the fidler, *we shall have their money presently, and then we will laugh at them.*

2. *Euclid* was beaten in *Boccaline*, for teaching his scholars a mathematical figure in his school, whereby he shewed, that all the lives both of princes and private men tended to one centre, *con gentilezza*, handsomly to get money out of other men's pockets, and put it into their own.

3. The pope used heretofore to send the princes of *Christendom* to fight against the *Turk* ; but prince and pope finely juggled together, the moneys were raised, and some men went out to the holy war, but commonly after they had got the money, the *Turk* was pretty quiet, and the prince and the pope shared it between them.

4. In all times the princes in *England* have done something illegal, to get money. But then came a parliament, and all was well, the people and the prince kissed and were friends, and so things were quiet for a while : Afterwards there was another trick found out to get money, and after they had got it, another parliament was called to set all right, &c. But now they have so out-run the constable.—

Moral honesty.

THEY that cry down moral honesty, cry down that which is a great part of religion, my duty towards God, and my duty towards man. What care I to see a man run after a sermon, if he couzen and cheats as soon as he comes home ? On the other side, morality must not be without religion, for if so, it may change, as I see convenience. Religion must govern it. He that has not religion to govern his morality, is not a drachm better than my malloff-dog ; so long as you stroke him and please him, and do not pinch him, he will play with you as finely as may be, he is a very good moral malloff ; but if you hurt him, he will fly in your face, and tear out your throat.

Mortgage.

IN case I receive a thousand pounds, and mortgage as much land as is worth two thousand to you, if I do not pay the money at such a day, I fail. Whether you may take my land and keep it in point of conscience ?

Answer. If you had my land as security only for your money, then you are not to keep it ; but if we bargained so, that if I did not repay your 1000 *l.* my land should go for it, be it what it will, no doubt you may with a safe conscience keep it ; for in these things all the obligation is, *servare fidem*.

Number.

ALL those mysterious things they observe in numbers, come to nothing, upon this very
12 L

ground, because number in it self is nothing, has not to do with nature, but is merely of human imposition, a meer sound. For example, when I cry one o'clock, two o'clock, three o'clock, that is but man's division of time, the time it self goes on, and it had been all one in nature, if those hours had been called nine, ten, and eleven. So when they say the seventh ion is fortunate, it means nothing; for if you count from the seventh backwards, then the first is the seventh, why is not he likewise fortunate?

Oaths.

1. SWEARING was another thing with the Jews than with us, because they might not pronounce the name of the Lord *Jehovah*.

2. There is no oath scarcely, but we swear to things we are ignorant of: For example, the oath of supremacy: How many know how the king is king? what are his right and prerogative? So how many know what are the privileges of the parliament, and the liberty of the subject, when they take the protestation? But the meaning is, they will defend them when they know them. As if I should swear I would take part with all that wear red ribbands in their hats, it may be I do not know which colour is red, but when I do know, and see a red ribband in a man's hat, then will I take his part.

3. I cannot conceive how an oath is imposed, where there is a parity, *viz.* in the house of commons, they are all *pares inter se*, only one brings a paper, and shews it the rest, they look upon it, and in their own sense take it: Now they are not *pares* to me, who am none of the house, for I do not acknowledge my self their subject; if I did, then no question I was bound by an oath of their imposing. 'Tis to me but reading a paper in their own sense.

4. There is a great difference between an assertory oath and a promissory oath. An assertory oath is made to a man before God, and I must swear so as man may know what I mean: But a promissory oath is made to God only, and I am sure he knows my meaning: So in the new oath it runs, *Whereas I believe in my conscience, &c. I will assist* thus and thus; that *whereas* gives me an outloose, for if I do not believe so, for ought I know, I swear not at all.

5. In a promissory oath, the mind I am in is a good interpretation, for if there be enough happened to change my mind, I do not know why I should not. If I promise to go to Oxford to-morrow, and mean it when I say it, and afterwards it appears to me, that 'twill be my undoing, will you say I have broke my promise if I stay at home? Certainly I must not go.

6. The Jews had this way with them concerning a promissory oath or vow; if one of them had vowed a vow, which afterwards appeared to him to be very prejudicial, by reason of something he either did not foresee, or did not think of, when he made his vow; if he made it known to three of his country-men, they had power to absolve him, though he could not absolve himself, and that they picked out of

some words in the text. Perjury hath only to do with an assertory oath, and no man was punished for perjury by man's law till queen Elizabeth's time; 'twas left to God, as a sin against him: The reason was, because 'twas so hard a thing to prove a man perjured; I might understand him, and he swears as he thought.

7. When men ask me whether they may take an oath in their own sense, 'tis to me, as if they should ask whether they may go to such a place upon their own legs. I would fain know how they can go otherwise.

8. If the ministers that are in sequestered livings will not take the engagement, threaten to turn them out and put in the old ones, and then I'll warrant you they will quietly take it. A gentleman having been rambling two or three days, at length came home, and being in bed with his wife, would fain have been at something, that she was unwilling to, and instead of complying, fell to chiding him for his being abroad so long: *Well*, says he, *if you will not, call up Sue*, his wife's chambermaid; upon that she yielded presently.

9. Now oaths are so frequent, they should be taken like pills, swallowed whole: If you chew them you will find them bitter: If you think what you swear, 'twill hardly go down.

Oracles.

ORACLES ceased presently after Christ, as soon as no body believed them. Just as we have no fortune-tellers, nor wife men, when no body cares for them. Sometimes you have a reason for them, when people believe them, and neither of these, I conceive, wrought by the devil.

Opinion.

1. OPINION and affection extremely differ. I may affect a woman best, but it does not follow, I must think her the handsomest woman in the world. I love apples best of any fruit; but it does not follow, I must think apples to be the best fruit. Opinion is something wherein I go about to give reason why all the world should think as I think. Affection is a thing wherein I look after the pleasing of my self.

2. 'Twas a good fancy of an old Platonick: The gods which are above men, had something whereof man did partake, an intellect, knowledge, and the gods kept on their course quietly. The beasts, which are below men, had something whereof man did partake, sense, and growth, and the beasts lived quietly in their way; but man had something in him, whereof neither gods nor beasts did partake, which gave him all the trouble, and made all the confusion in the world, and that is opinion.

3. 'Tis a foolish thing for me to be brought off from an opinion in a thing neither of us know, but are led only by some cobweb-stuff; as in such a case as this, *Utrum angeli invicem colloquantur*? If I forsake my side in such a case, I shew my self wonderful light, or infinitely complying, or flattering the other party.

But

But if I be in a business of nature, and hold an opinion one way, and some man's experience has found out the contrary, I may with a safe reputation give up my side.

4. 'Tis a vain thing to talk of an heretick, for a man for his heart can think no otherwise than he does think. In the primitive times there were many opinions, nothing scarce but some or other held: One of these opinions being embraced by some prince, and received into his kingdom, the rest were condemned as heresies, and his religion, which was but one of the several opinions, first is said to be orthodox, and so to have continued ever since the apostles.

Parity.

THIS is the juggling trick of the parity, they would have no body above them, but they do not tell you they would have no body under them.

Parliament.

1. ALL are involved in a parliament. There was a time when all men had their voice in choosing knights. About Henry the Vth's time they found the inconvenience; so one parliament made a law, that only he that had forty shillings *per annum* should give his voice, they under should be excluded. They made the law who had the voice of all, as well under forty shillings as above; and thus it continues at this day. All consent civilly in a parliament, women are involved in the men, children in those of perfect age, those that are under forty shillings a year in those that have forty shillings a year, those of forty shillings in the knights.

2. All things are brought to the parliament, little to the courts of justice; just as in a room where there is a banquet presented, if there be persons of quality there, the people must expect, and stay till the great ones have done.

3. The parliament flying upon several men, and then letting them alone, does as a hawk that flies a covey of partridges, and when she has flown them a great way, grows weary and takes a tree; then the falconer lures her down, and takes her to his fist; on they go again, *beirets*, up springs another covey, away goes the hawk, and as she did before, takes another tree, &c.

4. Dissenters in parliament may at length come to a good end, tho' first there be a great deal of do, and a great deal of noise, which mad wild folks make; just as in brewing of wrest-beer, there's a great deal of business in grinding the malt, and that spoils any man's cloaths that comes near it; then it must be mated, then comes a fellow in and drinks of the wort, and he's drunk; then they keep a huge quarter when they carry it into the cellar, and a twelve-month after 'tis delicate fine beer.

5. It must necessarily be that our distempers are worse than they were in the beginning of the parliament. If a physician comes to a sick man he lets him bleed, it may be scarifies him, cups him, puts him into a great disorder, before

he makes him well; and if he be sent for to cure an ague, and he finds his patient hath many discales, a dropfy, and a palsy, he applies remedies to 'em all, which makes the cure the longer, and the dearer: This is the case.

6. The parliament-men are as great princes as any in the world, when whatsoever they please is privilege of parliament; no man must know the number of their privileges, and whatsoever they dislike is breach of privilege. The duke of Venice is no more than speaker of the house of commons; but the senate at Venice, are not so much as our parliament-men, nor have they that power over the people, who yet exercise the greatest tyranny that is any where. In plain truth, breach of privilege is only the actual taking away of a member of the house, the rest are offences against the house. For example, to take out process against a parliament-man, or the like.

7. The parliament-party, if the law be for them, they call for the law; if it be against them, they will go to a parliamentary way; if law be for them, then for law again: Like him that first called for sack to heat him, then small drink to cool his sack, then sack again to heat his small drink, &c.

8. The parliament-party do not play fair play, in sitting up till two o'clock in the morning, to vote something they have a mind to. 'Tis like a crafty gameller that makes the company drunk, then cheats them of their money. Young men and infirm men go away. Besides, a man is not there to persuade other men to be of his mind, but to speak his own heart, and if it be liked, so, if not, there's an end.

Parson.

1. THOUGH we write *parson* differently, yet 'tis but *person*; that is, the individual *person* set apart for the service of such a church, and 'tis in *Latin persona*, and *personatus* is a *parsonage*. Indeed with the canon lawyers, *personatus* is any dignity or preferment in the church.

2. There never was a merry world since the *fairies* left dancing, and the parson left conjuring. The opinion of the latter kept thieves in awe, and did as much good in a country as a justice of peace.

Patience.

PATIENCE is the chiefest fruit of study. A man that strives to make himself a different thing from other men by much reading, gains this chiefest good, that in all fortunes he hath something to entertain and comfort himself withal.

Peace.

1. KING James was pictured going easily down a pair of stairs, and upon every step there was written *peace, peace, peace*; The wisest way for men in these times is to say nothing.

2. When

2. When a country-wench cannot get her butter to come, she says the witch is in her churn. We have been churning for peace a great while, and 'twill not come, sure the witch is in it.

3. Though we had peace, yet 'twill be a great while e'er things be settled: Tho' the wind lye, yet after a storm the sea will work a great while.

Penance.

PENANCE is only the punishment inflicted, not penitence, which is the right word; a man comes not to do penance, because he repents him of his sin, but because he is compelled to it; he curses him, and could kill him that sends him thither. The old canons wisely enjoined three years penance, sometimes more, because in that time a man got a habit of virtue, and so committed that sin no more, for which he did penance.

People.

1. THERE is not any thing in the world more abused than this sentence, *Salus populi suprema lex esto*, for we apply it, as if we ought to forsake the known law, when it may be most for the advantage of the people, when it means no such thing. For first, 'tis not *salus populi suprema lex est*, but *esto*, it being one of the laws of the twelve tables, and after divers laws made, some for punishment, some for reward, then follows this, *salus populi suprema lex esto*; that is, in all the laws you make, have a special eye to the good of the people; And then what does this concern the way they now go?

2. *Objection.* He that makes one, is greater than he that is made; the people make the king, *ergo*, &c.

Answer. This does not hold. For if I have 1000 *l. per annum*, and give it you, and leave my self never a penny, I made you; but when you have my land, you are greater than I. The parish makes the constable, and when the constable is made, he governs the parish. The answer to all these doubts is, Have you agreed so? If you have, then it must remain till you have altered it.

Pleasure.

1. PLEASURE is nothing else but the intermission of pain, the enjoying of something I am in great trouble for 'till I have it.

2. 'Tis a wrong way to proportion other men's pleasures to ourselves. 'Tis like a child's using a little bird, *O poor bird, thou shalt sleep with me*, so lays it in his bosom, and stifles it with his hot breath; the bird had rather be in the cold air: And yet too 'tis the most pleasing flattery, to like what other men like.

3. 'Tis most undoubtedly true, that all men are equally given to their pleasure, only thus, one man's pleasure lies one way, and another's

another. Pleasures are all alike, simply considered in themselves. He that hunts, or he that governs the common-wealth, they both please themselves alike, only we commend that, whereby we our selves receive some benefit; as if a man place his delight in things that tend to the common good. He that takes pleasure to hear sermons, enjoys himself as much as he that hears plays; and could he that loves plays endeavour to love sermons, possibly he might bring himself to it as well as to any other pleasure. At first it may seem harsh and tedious, but afterwards it would be pleasing and delightful. So it falls out in that which is the great pleasure of some men, Tobacco, at first they could not abide it, and now they cannot be without it.

4. Whilst you are upon earth enjoy the good things that are here (to that end were they given) and be not melancholy, and with yourself in heaven. If a king should give you the keeping of a castle, with all things belonging to it, orchards, gardens, &c. and bid you use them, withal promise you that after twenty years to remove you to the court, and to make you a privy counsellor; if you should neglect your castle, and refuse to eat of those fruits, and sit down, and whine, and wish you were a privy counsellor, do you think the king would be pleased with you?

5. Pleasures of meat, drink, cloaths, &c. are forbidden those that know not how to use them; just as nurses cry *pah!* when they see a knife in a child's hand; they will never say any thing to a man.

Philosophy.

WHEN men comfort themselves with philosophy, it is not because they have got two or three sentences, but because they have digested those sentences, and made them their own: So upon the matter, philosophy is nothing but discretion.

Poetry.

1. OVID was not only a fine poet, but, as a man may speak, a great canon lawyer, as appears in his *Fasts*, where we have more of the festivals of the old Romans than any where else: 'Tis pity the rest are lost.

2. There is no reason plays should be in verse, ether in blank or rhyme, only the poet has to say for himself, that he makes something like that, which some body made before him. The old poets had no other reason but this, their verse was sung to music, otherwise it had been a senseless thing to have fettered up themselves.

3. I never converted but two, the one was Mr. Crafhaw from writing against plays, by telling him a way how to understand that place, of *putting on women's apparel*, which has nothing to do in the business; as neither has it, that the fathers speak against plays in their time, with reason enough, for they had real idolatries mixed with their plays, having three altars perpetually

petually upon the stage. The other was a doctor of divinity, from preaching against painting, which simply in itself is no more hurtful, than putting on my cloaths, or doing any thing to make my self like other folks, that I may not be odious or offensive to the company. Indeed if I do it with an ill intention, it alters the case. So, if I put on my gloves with an intention to do a mischief, I am a villain.

4. 'Tis a fine thing for children to learn to make verse, but when they come to be men they must speak like other men, or else they will be laughed at. 'Tis ridiculous to speak, or write, or preach in verse. As 'tis good to learn to dance, a man may learn his leg, learn to go handsomely, but 'tis ridiculous for him to dance when he should go.

5. 'Tis ridiculous for a lord to print verses, 'tis well enough to make them to please himself, but to make them publick, is foolish. If a man in a private chamber twirls his bandstrings, or plays with a rush to please himself, 'tis well enough; but if he should go into *Fleet-street*, and sit upon a stall, and twirl a bandstring, or play with a rush, then all the boys in the street would laugh at him.

6. Verse proves nothing but the quantity of syllables, they are not meant for logick.

Pope.

1. A POPE'S bull and a pope's brief differ very much, as with us the great seal and the privy seal. The bull being the highest authority the pope can give, the brief is of less. The bull has a leaden seal upon silk, hanging upon the instrument, the brief has *sub annulo piscatoris* upon the side.

2. He was a wise pope, that when one that used to be merry with him, before he was advanced to the popedom, refrained afterwards to come at him, (presuming he was busy in governing the christian world) the pope sends for him, bids him come again, *And* (says he) *we will be merry as we were before, for thou little thinkest what a little foolery governs the whole world.*

3. The pope in sending relics to princes, does as wenches do by their *Wassels* at *New-years-tide*; they present you with a cup, and you must drink off a slabby stuff; but the meaning is, you must give them money, ten times more than it is worth.

4. The pope is infallible, where he hath power to command, that is, where he must be obeyed; so is every supreme power and prince. They that stretch his infallibility further, do they know not what.

5. When a protestant and a papist dispute, they talk like two madmen, because they do not agree upon their principles. The only way is to destroy the pope's power; for if he hath power to command me, 'tis not my alledging reasons to the contrary can keep me from obeying. For example, if a conflagrant command me to wear a green suit to-morrow, and has power to make me, 'tis not my alledging a hundred

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reasons of the folly of it, can excuse me from doing it.

6. There was a time when the pope had power here in *England*, and there was excellent use made of it, for 'twas only to serve turns, as might be manifested out of the records of the kingdom, which divines know little of. If the king did not like what the pope would have, he would forbid the pope's legate to land upon his ground. So that the power was truly then in the king, though suffered in the pope. But now the temporal and the spiritual power (spiritual so called because ordained to a spiritual end) spring both from one fountain, they are like to twirl that.

7. The protestants in *France* bear office in the state, because though their religion be different, yet they acknowledge no other king but the king of *France*. The papists in *England* they must have a king of their own, a pope, that must do something in our kingdom, therefore there is no reason they should enjoy the same privileges.

8. *Amsterdam* admits of all religions but papists, and 'tis upon the same account. The papists where ever they live, have another king at *Rome*; all other religions are subject to the present state, and have no prince elsewhere.

9. The papists call our religion a parliamentary religion, but there was once, I am sure, a parliamentary pope. Pope *Urban* was made pope in *England* by act of parliament, against pope *Clement*: The act is not in the book of statutes, either because he that compiled the book, would not have the name of the pope there, or else he would not let it appear that they meddled with any such thing, but 'tis upon the rolls.

10. When our clergy preach against the pope, and the church of *Rome*, they preach against themselves, and crying down their pride, their power, and their riches, have made themselves poor and contemptible enough, they dedicate first to please their prince, not considering what would follow. 'Tis just as if a man were to go a journey, and seeing at his first setting out the way clean and fair, ventures forth in his slippers, not considering the dirt and the sloughs are a little further off, or how suddenly the weather may change.

Papery.

1. THE demanding a noble for a dead body passing through a town, came from hence in time of popery: They carried the dead body into the church, where the priest said dirgies, and twenty dirgies at four pence a piece comes to a noble; but now 'tis forbidden by an order from my lord marshal; the heralds carry his warrant about them.

2. We charge the prelatical clergy with popery to make them odious, though we know they are guilty of no such thing: Just as heretofore they called images *mammets*, and the adoration of images *mammetry*; that is, *Mabomes* and *Mabomeiry*. Odious names! when all the

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world

world knows the *Turks* are forbidden images by their religion.

Power. State.

1. THERE is no stretching of power. 'Tis a good rule, eat within your stomach, act within your commission.

2. They that govern most, make least noise. You see when they row in a barge, they that do drudgery-work, slash, and puff, and sweat, but he that governs, sits quietly at the stern, and scarce is seen to stir.

3. Syllables govern the world.

4. *All power is of God*, means no more than, *ides est servanda*. When St. Paul said this, the people had made Nero emperor. They agree, he to command, they to obey. Then God comes in, and casts a hook upon them, *keep your faith*, then comes in, *all power is of God*. Never king dropped out of the clouds. God did not make a new emperor, as the king makes a justice of peace.

5. Christ himself was a great observer of the civil power, and did many things only justifiable, because the state required it, which were things merely temporary for the time that state stood; but divines make use of them to gain power to themselves; as for example, that of *dic ecclesiae*, tell the church; there was then a *sanhedrim*, a court to tell it to, and therefore they would have it so now.

6. Divines ought to do no more than what the state permits. Before the state became christian, they made their own laws, and those that did not observe them, they excommunicated, [*naughty men*] they suffered them to come no more amongst them. But if they would come among them, how could they hinder them? By what law? By what power? They were still subject to the state, which was heathen. Nothing better expresses the condition of christians in those times, than one of the meetings you have in *London*, of men of the same country, of *Suffex*-men, or *Bedfordshire*-men, they appoint their meeting, and they agree, and make laws amongst themselves, *be that is not there shall pay double*, &c. and if any one misbehave himself, they shut him out of their company; but can they recover a forfeiture made concerning their meeting by any law? Have they any power to compel one to pay? But afterwards when the state became christian, all the power was in them, and they gave the church as much, or as little as they pleased, and took away when they pleased, and added what they pleased.

7. The church is not only subject to the civil power with us that are protestants, but also in *Spain*, if the church does excommunicate a man for what it should not, the civil power will take him out of their hands. So in *France*, the bishop of *Angiers* altered something in the breviary, they complained to the parliament at *Paris*, that made him alter it again, with a *comme abuse*.

8. The parliament of *England* has no arbitrary power in point of judicature, but in point of making law only.

9. If the prince be *servus naturæ*, of a servile base spirit, and the subjects *liberi*, free and ingenuous, oft-times they depose their prince, and govern themselves. On the contrary, if the people be *servi naturæ*, and some one amongst them of a free and ingenuous spirit, he makes himself king of the rest, and this is the cause of all changes in state; common-wealths into monarchies, and monarchies into common-wealths.

10. In a troubled state we must do as in foul weather upon the *Thames*, not think to cut directly through; so the boat may be quickly full of water, but rise and fall as the waves do, give as much as conveniently we can.

Prayer.

1. IF I were a minister, I should think my self most in my office, reading of prayers, and dispensing the sacraments; and 'tis ill done to put one to officiate in the church, whose person is contemptible out of it. Should a great lady that was invited to be a gossip, in her place send her kitchen-maid, 'twould be ill taken, yet she is a woman as well as she; let her send her woman at least.

2. *You shall pray*, is the right way, because according as the church is settled, no man may make a prayer in publick of his own head.

3. 'Tis not the original common-prayer-book. Why? Shew me an original bible, or an original *magna charta*.

4. Admit the preacher prays by the spirit, yet that very prayer is common-prayer to the people; they are tied as much to his words, as in saying, *almighty and most merciful father*. Is it then unlawful in the minister, but not unlawful in the people?

5. There were some mathematicians, that could with one fetch of their pen make an exact circle, and with the next touch, point out the center; Is it therefore reasonable to banish all use of the compasses? Set forms are a pair of compasses.

6. *God hath given gifts unto men*. General texts prove nothing: Let him shew me *John*, *William*, or *Thomas* in the text, and then I will believe him. If a man hath a voluble tongue, we say, *he hath the gift of prayer*. His gift is to pray long, that I see; but does he pray better?

7. We take care what we speak to men, but to God we may say any thing.

8. The people must not think a thought towards God, but as their pastors will put it into their mouths. They will make right sheep of us.

9. The *English* priests would do that in *English*, which the *Romish* do in *Latin*, keep the people in ignorance; but some of the people out-do them at their own game.

10. Pray-

10. Prayer should be short, without giving God almighty reasons why he should grant this, or that, he knows best what is good for us. If your boy should ask you a suit of cloaths, and give you reasons (otherwise he cannot wait upon you, he cannot go abroad but he shall discredit you) would you endure it? You know it better than he; let him ask a suit of cloaths.

11. If a servant that has been fed with good beef, goes into that part of *England* where salmon is plenty, at first he is pleased with his salmon, and despises his beef; but after he has been there a while, he grows weary of his salmon, and wishes for his good beef again. We have a while been much taken with this praying by the spirit, but in time we may grow weary of it, and wish for our common-prayer.

12. 'Tis hoped we may be cured of our extemporary prayers, the same way the grocer's boy is cured of his eating plums, when we have had our belly full of them.

Preaching.

1. NOTHING is more mistaken than that speech, *preach the gospel*, for 'tis not to make long harangues, as they do now a-days, but to tell the news of Christ's coming into the world, and when that is done, or where it is known already, the preacher's work is done.

2. Preaching in the first sense of the word, ceased as soon as ever the gospels were written.

3. When the preacher says, *this is the meaning of the Holy Ghost in such a place*, in sense he can mean no more than this, that is, I by studying of the place, by comparing one place with another, by weighing what goes before, and what comes after, think this is the meaning of the Holy Ghost, and for shortness of expression I say, the Holy Ghost says thus, or this is the meaning of the spirit of God. So the judge speaks of the king's proclamation, this is the intention of the king, not that the king had declared his intention any other way to the judge, but the judge examining the contents of the proclamation, gathers by the purport of the words, the king's intention, and then for shortness of expression says, this is the king's intention.

4. Nothing is text but what was spoken of in the bible, and meant there for person and place, the rest is application, which a discreet man may do well; but 'tis his scripture, not the Holy Ghost.

5. Preaching by the spirit, as they call it, is most esteemed by the common people, because they cannot abide art or learning, which they have not been bred up in. Just as in the business of fencing; if one country fellow amongst the rest, has been at the school, the rest will under-value his skill, or tell him he wants valour: *You come with your school-tricks: There's Dick Butcher has ten times more mettle in him.* So they say to the preachers, *You come with your school-learning: There's such a one has the spirit.*

6. The tone in preaching does much in working upon the people's affections. If a man

should make love in an ordinary tone, his mistress would not regard him; and therefore he must whine. If a man should cry fire, or murder in an ordinary voice, no body would come out to help him.

7. Preachers will bring any thing into the text. The young masters of arts preached against non-residency in the university, whereupon the heads made an order, that no man should meddle with any thing but what was in the text. The next day one preached upon these words, *Abraham begat Isaac*; when he had gone a good way, at last he observed, that *Abraham* was resident, for if he had been non-resident, he could never have begot *Isaac*; and so fell foul upon the non-residents.

8. I could never tell what often preaching meant, after a church is settled, and we know what is to be done: 'Tis just as if a husbandman should once tell his servants what they are to do, when to sow, when to reap, and afterwards one should come and tell them twice or thrice a day what they know already; *You must sow your wheat in October, you must reap your wheat in August, &c.*

9. The main argument why they would have two sermons a day, is, because they have two meals a day; the soul must be fed as well as the body. But I may as well argue, I ought to have two noses, because I have two eyes, or two mouths, because I have two ears. What have meals and sermons to do one with another?

10. The things between God and man are but a few, and those, forsooth, we must be told often of; but things between man and man are many; those I hear not of above twice a year, at the assizes, or once a quarter at the sessions; but few come then; nor does the minister exhort the people to go at these times to learn their duty towards their neighbour. Often preaching is sure to keep the minister in countenance, that he may have something to do.

11. In preaching, they say more to raise men to love virtue than men can possibly perform, to make them do their best: As if you would teach a man to throw the bar; to make him put out his strength, you bid him throw further than it is possible for him, or any man else: *Throw over yonder house.*

12. In preaching, they do by men as writers of romances do by their chief knights, bring them into many dangers, but still fetch them off: So they put men in fear of hell, but at last they bring them to heaven.

13. Preachers say, *Do as I say, not as I do.* But if a physician had the same disease upon him that I have, and he should bid me do one thing, and he do quite another, could I believe him?

14. Preaching the same sermon to all sorts of people, is, as if a school-master should read the same lesson to his several forms: If he reads *amo, amas, amavi*, the highest forms laugh at him; the younger boys admire him. So it is in preaching to a mixed auditory.

Obj.

Obj. But it cannot be otherwise; the parish cannot be divided into several forms: What must the preacher then do in discretion?

Ans. Why then let him use some expressions, by which this or that condition of people may know such doctrine does more especially concern them, it being so delivered that the wisest may be content to hear. For if he delivers it altogether, and leaves it to them to single out what belongs to themselves, which is the usual way, it is as if a man would bestow gifts upon children of several ages, two years old, four years old, ten years old, &c. and there he brings tops, pins, points, ribbands, and casts them all in a heap together upon a table before them; though the boy of ten years old knows how to chuse his top, yet the child of two years old, that should have a ribband, takes a pin, and the pin e'er he be aware pricks his fingers, and then all is out of order, &c. Preaching, for the most part, is the glory of the preacher, to shew himself a fine man. Catechising would do much better.

15. Use the best arguments to persuade, though but few understand, for the ignorant will sooner believe the judicious of the parish, than the preacher himself, and they teach when they dissipate what he has said, and believe it the sooner, confirmed by men of their own side; for betwixt the laity and the clergy, there is, as it were, a continual driving of a bargain; something the clergy would still have us be as, and therefore many things are heard from the preacher with suspicion. They are afraid of some ends, which are easily assented to, when they have it from some of themselves. 'Tis with a sermon as 'tis with a play; many come to see it, which do not understand it, and yet hearing it cryed up by one, whose judgment they call themselves upon, and of power with them, they swear and will die in it, that it is a very good play, which they would not have done if the priest himself had told them so. As in a great school, 'tis the master that teaches all; the monitor does a great deal of work; it may be the boys are afraid to see the master: So in a parish it is not the minister does all; the greater neighbour teaches the lesser, the master of the house teaches his servant, &c.

16. First in your sermons use your logick, and then your rhetoric. Rhetoric without logick, is like a tree with leaves and blossoms, but no root; yet I confess more are taken with rhetoric than logick, because they are catched with a free expression, when they understand not reason. Logick must be natural, or it is worth nothing at all: Your rhetoric figures may be learned. That rhetoric is best which is most seasonable and most catching. An instance we have in that old blunt commander at Cadix, who shewed himself a good orator, being to say something to his soldiers (which he was not used to do) he made them a speech to this purpose: *What a shame will it be, you Englishmen, that feed upon good beef and brew-cis, to let those rascally Spaniards beat you, that eat nothing but oranges and lemons?* And

so put more courage into his men than he could have done with a more learned oration. Rhetoric is very good, or stark naught: There is no medium in rhetoric. If I am not fully persuaded, I laugh at the orator.

17. It is good to preach the same thing again, for that's the way to have it learned. You see a bird by often whistling to learn a tune, and a month after record it to her self.

18. It is a hard case a minister should be turned out of his living for something they inform he should say in his pulpit. We can no more know what a minister said in his sermon by two or three words picked out of it, than we can tell what tune a musican played last upon the lute, by two or three single notes.

Predestination.

1. THEY that talk nothing but predestination, and will not proceed in the way of heaven till they be satisfied in that point, do, as a man that would not come to *London*, unless at his first step he might set his foot upon the top of *Paul's*.

2. For a young divine to begin in his pulpit with predestination, is as if a man were coming into *London*, and at his first step would think to set his foot, &c.

3. Predestination is a point inaccessible, out of our reach; we can make no notion of it, it is so full of intricacy, so full of contradiction; it is in good earnest, as we state it, half a dozen bulls one upon another.

4. Doctor *Prideaux* in his lectures, several days used arguments to prove predestination; at last tells his auditory they are damned that do not believe it; doing herein just like school-boys; when one of them has got an apple, or something the rest have a mind to, they use all the arguments they can to get some of it from them: *I gave you some the other day: You shall have some with me another time:* when they cannot prevail, they tell him he is a jackanapes, a rogue and a rascal.

Preferment.

1. WHEN you would have a child go to such a place, and you find him unwilling, you tell him he shall ride a cock-horse, and then he will go presently: So do those that govern the state, deal by men, to work them to their ends; they tell them they shall be advanced to such or such a place, and they will do any thing they would have them.

2. A great place strangely qualifies. *John Read*, groom of the chamber to my lord of *Kent*, was in the right. Attorney *Key* being dead, some were saying, how will the king do for a fit man? Why, any man, says *John Read*, may execute the place. I warrant, says my lord, thou thinkest thou understandest enough to perform it. Yes, quoth *John*, let the king make me attorney, and I would fain see that man, that durst tell me, there's any thing I understand not.

3. When

3. When the pageants are a coming, there is a great thruffling and a riding upon one another's backs, to look out at the window; stay a little and they will come just to you, you may see them quietly. So it is when a new statesman or officer is to be chosen; there is a great expectation and listening who it should be; stay a while, and you may know quietly.

4. Missing preferment makes the presbyters fall foul upon the bishops. Men that are in hopes and in the way of rising, keep in the channel, but they that have none, seek new ways: 'Tis so among the lawyers; He that hath the judge's ear, will be very observant of the way of the court; but he that hath no regard, will be flying out.

5. My lord *Digby* having spoken something in the house of commons, for which they would have questioned him, was presently called to the upper house. He did by the parliament as an ape when he hath done some wagging; his master spies him, and he looks for his whip, but before he can come at him, whip says he to the top of the house.

6. Some of the parliament were discontented, that they wanted places at court, which others had got; but when they had them once, then they were quiet. Just as at a christening, some that get no sugar-plumbs, when the rest have, murmur and grumble; presently the wench comes again with her basket of sugar-plumbs, and then they catch and scramble, and when they have got them, you hear no more of them.

Praemunire.

THERE can be no *praemunire*. A *praemunire*, so called from the word *praemunire facias*, was when a man laid an action in an ecclesiastical court, for which he could have no remedy in any of the king's courts; that is, in the courts of common law; by reason the ecclesiastical courts before *Henry VIII.* were subordinate to the pope, and so it was *contra coronam & dignitatem regis*; but now the ecclesiastical courts are equally subordinate to the king. Therefore it cannot be *contra coronam & dignitatem regis*, and so no *praemunire*.

Prerogative.

1. PREROGATIVE is something that can be told what it is, not something that has no name. Just as you see the archbishop has his prerogative court, but we know what is done in that court. So the king's prerogative is not his will, or what divines make it, a power to do what he lists.

2. The king's prerogative, that is, the king's law. For example, if you ask whether a patron may present to a living after six months by law? I answer, no. If you ask whether the king may? I answer he may by his prerogative, that is, by the law that concerns him in that case.

VOL. III.

Presbytery.

1. THEY that would bring in a new government, would very vain persuade us they meet it in antiquity; thus they interpret presbyters, when they meet the word in the fathers. Other professions likewise pretend to antiquity. The alchymist will find his art in *Virgil's aureus ramus*, and he that delights in optics, will find them in *Tacitus*. When *Caesar* came into *England* they would persuade us they had perspective-glasses, by which he could discover what they were doing upon the land, because it is said, *positis speculis*: The meaning is, his watch, or his sentinel discovered this, and this unto him.

2. Presbyters have the greatest power of any clergy in the world, and gull the laity most: For example, admit there be twelve lay-men to six presbyters, the six shall govern the rest as they please. First, because they are constant, and the others come in like church-wardens in their turns, which is an huge advantage. Men will give way to them who have been in place before them. Next the lay-men have other professions to follow; the presbyters make it their sole business; and besides too they learn and study the art of persuading; some of *Geneva* have confessed as much.

3. The presbyter, with his elders about him, is like a young tree fenced about with two, or three, or four stakes; the stakes defend it, and hold it up; but the tree only prospers and flourishes; it may be some willow-stake may bear a leaf or two, but it comes to nothing. Lay-elders are stakes, the presbyter the tree that flourishes.

4. When the queries were sent to the assembly concerning the *jus divinum* of presbytery, their asking time to answer them, was a satire upon themselves. For if it were to be seen in the text, they might quickly turn to the place, and shew us it. Their delaying to answer makes us think there is no such thing there. They do just as you have seen a fellow do at a tavern reckoning, when he should come to pay his reckoning he puts his hands into his pockets, and keeps a grabbing and a fumbling and shaking, at last tells you he has left his money at home; when all the company knew at first he had no money there, for every man can quickly find his own money.

Priests of Rome.

1. THE reason of the statute against priests, was this; in the beginning of queen *Elizabeth*, there was a statute made, that he that drew men from their civil obedience was a traitor. It happened this was done in privacies and confessions, when there could be no proof; therefore they made another act, that for a priest to be in *England*, was treason, because they presumed that was his business to fetch men off from their obedience.

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2. When

2. When queen *Elizabeth* died, and king *James* came in, an *Irish* priest does thus exprels it; *Elizabetha in orcum detrusa, successit Jacobus, alter haereticus.*

You will ask why they did use such language in their church?

Ans. Why does the nurse tell the child of raw-head and bloody-bones? To keep it in awe.

3. The queen-mother and count *Rosset*, are to the priests and jesuites like the honey-pot to the flies.

4. The priests of *Rome* aim but at two things, to get power from the king, and money from the subject.

5. When the priests come into a family, they do as a man that would set fire on a house: He does not put fire to the brick-wall, but thrusts it into the thatch. They work upon the women, and let the men alone.

6. For a priest to turn a man when he lies a dying, is just like one that hath a long time solicited a woman, and cannot obtain his end; at length makes her drunk, and so lies with her.

Prophecies.

DREAMS and prophecies do thus much good; they make a man go on with boldness and courage, upon a danger or a mistress; if he obtains, he attributes much to them; if he miscarries, he thinks no more of them, or is no more thought of himself.

Proverbs.

THE proverbs of several nations were much studied by bishop *Andrews*, and the reason he gave, was, because by them he knew the minds of several nations, which is a brave thing: As we count him a wise man, that knows the minds and insides of men, which is done by knowing what is habitual to them. Proverbs are habitual to a nation, being transmitted from father to son.

Question.

WHEN a doubt is propounded, you must learn to distinguish, and shew wherein a thing holds, and wherein it does not hold. Ay, or no, never answered any question. The not distinguishing where things should be distinguished, and the not confounding, where things should be confounded, is the cause of all the mistakes in the world.

Reason.

1. IN giving reasons, men commonly do with us as the woman does with her child; when she goes to market about her business, she tells it the goes to buy it a fine thing, to buy it a cake, or some plumbs. They give us such reasons as they think we will be caught withal, but never let us know the truth.

2. When the school-men talk of *recta ratio* in morals, either they understand reason, as it

is governed by a command from above; or else they say no more than a woman, when she says a thing is so, because it is so; that is, her reason persuades her it is so. The other acceptance has sense in it. As take a law of the land, I must not depopulate, my reason tells me so. Why? because if I do, I incur the detriment.

3. The reason of a thing is not to be enquired after, till you are sure the thing it self be so. We commonly are at *what is the reason of it?* before we are sure of the thing. It was an excellent question of my lady *Cotton*, when Sir *Robert Cotton* was magnifying of a shoe, which was *Moses's* or *Noah's*, and wondering at the strange shape and fashion of it: But Mr. *Cotton*, says she, *are you sure it is a shoe.*

Retaliation.

An eye for an eye, and a tooth for a tooth. That does not mean, that if I put out another man's eye, therefore I must lose one of my own, (for what is he the better for that?) though this be commonly received; but it means, I shall give him what satisfaction an eye shall bejudged to be worth.

Reverence.

IT is sometimes unreasonable to look after respect and reverence, either from a man's own servant, or other inferiors. A great lord and a gentleman talking together, there came a boy by, leading a calf with both his hands; says the lord to the gentleman, *Thou shalt see me make the boy let go his calf;* with that he came towards him, thinking the boy would have put off his hat, but the boy took no notice of him. The lord seeing that, *Sirrah*, says he, *do you not know me, that you use no reverence?* *Yes*, says the boy, *if your lordship will hold my calf, I will pull off my hat.*

Non-reverency.

1. THE people thought they had a great victory over the clergy, when in *Henry VIII's* time they got their bill passed, that a clergyman should have but two livings; before, a man might have twenty or thirty; it was but getting a dispensation from the pope's limiter, or gatherer of the *Peter-pence*, which was as easily got, as now you may have a licence to eat flesh.

2. As soon as a minister is made, he hath power to preach all over the world, but the civil power restrains him; he cannot preach in this parish, or in that; there is one already appointed. Now if the state allows him two livings, then he hath two places where he may exercise his function, and so has the more power to do his office, which he might do every where if he were not restrained.

Religion.

1. KING *James* said to the flye, *Have I three kingdoms, and thou must needs fly into my eye?* Is there not enough to meddle with upon the

the stage, or in love, or at the table, but religion ?

2. Religion amongst men, appears to me like the learning they got at school. Some men forget all they learned, others 'spend upon the stock, and some improve it. So some men forget all the religion that was taught them when they were young, others 'spend upon that stock, and some improve it.

3. Religion is like the fashion, one man wears his doublet slashed, another laced, another plain; but every man has a doublet: So every man has his religion. We differ about trimming.

4. Men say they are of the same religion for quietness sake; but if the matter were well examined, you would scarce find three any where of the same religion in all points.

5. Every religion is a getting religion; for though I may self get nothing, I am subordinate to those that do. So you may find a lawyer in the *Temple* that gets little for the present, but he is fitting himself to be in time one of those great ones that do get.

6. Alteration of religion is dangerous, because we know not where it will stay; it is like a millstone that lies upon the top of a pair of stairs; it is hard to remove it, but if once it be thrust off the first stair, it never stays till it comes to the bottom.

7. *Question.* Whether is the church or the scripture judge of religion ?

Answer. In truth neither, but the state. I am troubled with a boil; I call a company of chirurgeons about me; one prescribes one thing, another another; I single out something I like; and ask you that stand by, and are no chirurgeons, what you think of it: You like it too; you and I are judges of the plaister, and we bid them prepare it, and there is an end. Thus it is in religion; the protestants say they will be judged by the scripture; the papists say so too; but that cannot speak. A judge is no judge, except he can both speak and command execution: But the truth is, they never intend to agree. No doubt the pope, where he is supreme, is to be judge; if he say we in *England* ought to be subject to him, then he must draw his sword and make it good.

8. By the law was the *Manual* received into the church before the reformation, not by the civil law, that had nothing to do in it; nor by the canon law, for that *Manual* that was here, was not in *France*, nor in *Spain*; but by custom, which is the common law of *England*; and custom is but the elder brother to a parliament; and so it will fall out to be nothing that the papists say. Ours is a parliamentary religion, by reason the service-book was established by act of parliament, and never any service-book was so before. That will be nothing that the pope sent the *Manual*. 'Twas ours, because the state received it. The state still makes the religion, and receives into it, what will best agree with it. Why are the *Venetians Roman* catholics? Because the state likes the religion. All the world knows they care not three pence for the pope. The council of *Trent* is not at this day admitted in *France*.

9. *Papist.* Where was your religion before *Luther*, an hundred years ago ?

Protestant. Where was *America* an hundred or six-score years ago ? Our religion was where the rest of the christian church was.

Papist. Our religion continued ever since the apostles, and therefore it is better.

Protestant. So did ours. That there was an interruption of it, will fall out to be nothing; no more than if another earl should tell me of the earl of *Kent*, saying, he is a better earl than he, because there was one or two of the family of *Kent* did not take the title upon them; yet all that while they were really earls; and afterwards a great prince declared them to be earls of *Kent*, as he that made the other family an earl.

10. Disputes in religion will never be ended, because there wants a measure by which the business would be decided. The puritan would be judged by the word of God: If he would speak clearly, he means himself, but he is ashamed to say so; and he would have me believe him before a whole church, that has read the word of God as well as he. One says one thing, and another another; and there is, I say, no measure to end the controversy. 'Tis just as if two men were at bowls, and both judged by the eye: One says it is his cast, the other says it is my cast; and having no measure, the difference is eternal. *Ben Johnson* satyrically expressed the vain disputes of divines by *Inigo Lanthorne*, disputing with his puppet in a *Bartholomew* fair. It is so: It is not so: It is so: It is not so, crying thus one to another a quarter of an hour together.

11. In matters of religion, to be ruled by one that writes against his adversary, and throws all the dirt he can in his face, is, as if in point of good manners a man should be governed by one whom he sees at cuffs with another, and thereupon thinks himself bound to give the next man he meets a box on the ear.

12. It is to no purpose to labour to reconcile religions, when the interest of princes will not suffer it. It is well if they could be reconciled so far, that they should not cut one another's throats.

13. There is all the reason in the world divines should not be suffered to go a hair beyond their bounds, for fear of breeding confusion, since there now be so many religions on foot. The matter was not so narrowly to be looked after when there was but one religion in christendom; the rest would cry him down for an heretick, and there was no body to side with him.

14. We look after religion, as the butcher did after his knife, when he had it in his mouth.

15. Religion is made a juggler's paper; now it is a horse, now it is a lanthorn, now it is a boar, now it is a man. To serve ends, religion is turned into all shapes.

16. Pretending religion and the law of God, is to set all things loose. When a man has no mind to do something he ought to do by his contract

contract with man, then he gets a text, and interprets it as he pleases, and so thinks to get loose.

17. Some men's pretending religion, is like the roaring boy's way of challenges, *Their reputation is dear, it does not stand with the honour of a gentleman*, when, God knows, they have neither *honour* nor *reputation* about them.

18. They talk much of settling religion. Religion is well enough settled already, if we would let it alone. Methinks we might look after, &c.

19. If men would say they took arms for any thing but religion, they might be beaten out of it by reason; out of that they never can, for they will not believe you whatever you say.

20. The very *arcanum* of pretending religion in all wars is, that something may be found out in which all men may have interest. In this the groom has as much interest as the lord. Were it for land, one has one thousand acres, and the other but one; he would not venture so far, as he that has a thousand. But religion is equal to both. Had all men land alike, by a *lex agraria*, then all men would say they fought for land.

Sabbath.

WHY should I think all the fourth commandment belongs to me, when all the fifth does not? What land will the lord give me for honouring my father? It was spoken to the *Jews* with reference to the land of *Canaan*; but the meaning is, if I honour my parents, God will also bless me. We read the commandments in the church-service, as we do *David's* psalms, not that all these concerns us, but a great deal of them does.

Sacrament.

1. CHRIST suffered *Judas* to take the communion. Those ministers that keep their parishioners from it, because they will not do as they will have them, revenge, rather than reform.

2. No man can tell whether I am fit to receive the sacrament; for though I were fit the day before, when he examined me; at least appeared so to him; yet how can he tell what sin I have committed that night, or the next morning, or what impious atheistical thoughts I may have about me, when I am approaching to the very table?

Salvation.

WE can best understand the meaning of *σωτηρια, salvation*, from the *Jews*, to whom the Saviour was promised. They held that themselves should have the chief place of happiness in the other world; but the *Gentiles* that were good men, should likewise have their portion of bliss there too. Now by Christ the partition-wall is broken down, and the *Gentiles*

that believe in him, are admitted to the same place of bliss with the *Jews*. And why then should not that portion of happiness still remain to them, who do not believe in *Christ*, so they be morally good? This is a charitable opinion.

State.

IN a troubled state save as much for your own as you can. A dog had been at market to buy a shoulder of mutton; coming home, he met two dogs by the way, that quarrelled with him; he laid down his shoulder of mutton, and fell to fighting with one of them; in the mean time the other dog fell to eating his mutton; he seeing that, left the dog he was fighting with, and fell upon him that was eating; then the other dog fell to eat; when he perceived there was no remedy, but which of them soever he fought withal, his mutton was in danger, he thought he would have as much of it as he could, and thereupon gave over fighting, and fell to eating himself.

Superstition.

1. THEY that are against superstition, oftentimes run into it of the wrong side. If I will wear all colours but black, then am I superstitious in not wearing black.

2. They pretend not to abide the crows, because it is superstitious; for my part I will believe them, when I see them throw their money out of their pockets, and not till then.

3. If there be any superstition truly and properly so called, it is their observing the sabbath after the *Jewish* manner.

Subsidies.

1. HERETOFORE the parliament was wary what subsidies they gave to the king, because they had no account; but now they care not how much they give of the subjects money, because they give it with one hand and receive it with the other; and so upon the matter give it themselves. In the mean time what a case the subjects of *England* are in? If the men they have sent to the parliament misbehave themselves, they cannot help it, because the parliament is eternal.

2. A subsidy was counted the fifth part of a man's estate, and so fifty subsidies is five and forty times more than a man is worth.

Simony.

THE name of simony was begot in the canon law: The first statute against it was in queen *Elizabeth's* time. Since the reformation simony has been frequent: One reason why it was not practised in time of popery, was the pope's provision: No man was sure to bestow his own benefice.

Ship-

Ship money.

1. MR. Noy brought in ship-money first for maritime towns; but that was like putting in a little augre, that afterwards you may put in a greater. He that pulls down the first brick, does the main work, afterwards it is easy to pull down the wall.

2. They that at first would not pay ship-money, till it was decided, did like brave men, though perhaps they did no good by the trial; but they that stand out since, and suffer themselves to be distrained, never questioning those that do it, do pitifully, for so they only pay twice as much as they should.

Synod. Assembly.

1. WE have had no national synod since the kingdom hath been settled, as now it is, only provincial; and there will be this inconvenience, to call so many divines together; it will be to put power in their hands, who are too apt to usurp it, as if the laity were bound by their determination. No, let the laity consult with divines on all sides, hear what they say, and make themselves masters of their reasons; as they do by any other profession, when they have a difference before them. For example, goldsmiths, they enquire of them, if such a jewel be of such a value, and such a stone of such a value, hear them, and then, being rational men, judge themselves.

2. Why should you have a synod, when you have a convocation already, which is a synod? Would you have a superfetation of another synod? The clergy of England when they cast off the pope, submitted themselves to the civil power, and so have continued; but these challenge to be *jure divino*, and so to be above the civil power: These challenge power to call before their presbyteries all persons for all sins directly against the law of God, as proved to be sins by necessary consequence. If you would buy gloves, send for a glover or two, not glovers-hall: Consult with some divines, not send for a body.

3. There must be some laymen in the synod, to over-look the clergy, lest they spoil the civil work. Just as when the good woman puts a cat into the milk-house to kill a mouse, she sends her maid to look after the cat, lest the cat should eat up the cream.

4. In the ordinance for the assembly, the lords and commons go under the names of learned, godly, and judicious divines; there is no difference put betwixt them and the ministers in the context.

5. It is not unusual in the assembly to revoke their votes, by reason they make so much haste, but it is *that* will make them scorned. You never heard of a council that revoked an act of its own making. They have been wary in that, to keep up their infallibility: if they did any thing, they took away the whole council, and yet we would be thought infallible as any body.

It is not enough to say, the house of commons revoke their votes, for theirs are but civil truths, which they by agreement create, and uncreate, as they please: But the truths the synod deals in are divine, and when they have voted a thing, if it be then true, it was true before, not true because they voted it, nor does it cease to be true, because they voted otherwise.

6. Subscribing in a synod, or to the articles of a synod, is no such terrible thing as they make it; because, if I am of a synod, it is agreed, either tacitly or expressly. That which the major part determines, the rest are involved in; and therefore I subscribe, though my own private opinion be otherwise; and upon the same ground, I may without scruple subscribe to what those have determined, whom I sent, though my private opinion be otherwise, having respect to that which is the ground of all assemblies, the major part carries it.

Thanksgiving.

AT first we gave thanks for every victory as soon as ever it was obtained; but since we have had many, now we can stay a good while. We are just like a child; give him a plumb, he makes his leg; give him a second plumb, he makes another leg: At last when his belly is full, he forgets what he ought to do; then his nurse, or some body else that stands by him, puts him in mind of his duty, *Where's your leg?*

Tythes.

1. TYTHES are more paid in kind in England, than in all Italy and France. In France they have had impropriations a long time; we had none in England till Henry VIII.

2. To make an impropriation, there was to be the consent of the incumbent, the patron, and the king; then it was confirmed by the pope: Without all this the pope could make no impropriation.

3. Or what if the pope gave the tythes to any man, must they therefore be taken away? If the pope gives me a jewel, will you therefore take it away from me?

4. Abraham paid tythes to Melchisedeck, what then? It was very well done of him: It does not follow therefore that I must pay tythes, no more than I am bound to imitate any other action of Abraham's.

5. It is ridiculous to say the tythes are God's part, and therefore the clergy must have them: Why, so they are if the layman has them. It is as if one of my lady Kent's maids should be sweeping this room, and another of them should come and take away the broom, and tell for a reason, why she should part with it; it is my lady's broom: As if it were not my lady's broom, which of them soever had it.

6. They consulted in Oxford where they might find the best arguments for their tythes, setting aside the *jus divinum*; they were advised to my *History of tythes*; a book so much

cried down by them formerly; in which, I dare boldly say, there are more arguments for them than are extant together any where: Upon this, one writ me word, that my history of tythes was now become like *Pelias basket*, to wound and to heal. I told him in my answer, I thought I could fit him with a better instance. It was possible it might undergo the same fate that *Aristotle*, *Avicen* and *Averroes* did in *France*, some five hundred years ago, which were excommunicated by *Stephen* bishop of *Paris*, by that very name *excommunicated*, because that kind of learning puzzled and troubled their divinity: But finding themselves at a loss, some forty years after (which is much about the time since I writ my history) they were called in again, and so have continued ever since.

Trade.

1. THERE is no prince in christendom but is directly a tradesman, though in another way than an ordinary tradesman. For the purpose, I have a man, I bid him lay out twenty shillings in such commodities, but I tell him for every shilling he lays out I will have a penny: I trade as well as he. This every prince does in his customs.

2. That which a man is bred up in, he thinks no cheating; as your tradesman thinks not so of his profession, but calls it a mystery. Whereas if you would teach a mercer to make his silks heavier than what he has been used to do, he would peradventure think that to be cheating.

3. Every tradesman professes to cheat me, that asks for his commodity twice as much as it is worth.

Tradition.

SAY what you will against tradition; we know the signification of words by nothing but tradition. You will say the scripture was written by the holy spirit, but do you understand that language it was writ in? No. Then for example, take these words, *In principio erat verbum*. How do you know those words signify, *In the beginning was the word*, but by tradition, because some body has told you so?

Transubstantiation.

1. THE fathers using to speak rhetorically, brought up transubstantiation: As if because it is commonly said, *amicus est alter idem*, one should go about to prove a man and his friend are all one. That opinion is only rhetoric turned into logic.

2. There is no greater argument (though not used) against transubstantiation, than the apostles, at their first council, forbidding blood and suffocation. Would they forbid blood, and yet enjoin the eating of blood too?

3. The best way for a pious man, is to address himself to the sacrament with that reve-

rence and devotion, as if Christ were really there present.

Traitor.

'TIS not seasonable to call a man traitor, that has an army at his heels. One with an army is a gallant man. My lady *Cotton* was in the right, when she laughed at the dutcheſs of *Richmond* for taking such state upon her, when she could command no forces. *She a dutcheſs! there is in Flanders a dutcheſs indeed*; meaning the arch-dutcheſs.

Trinity.

THE second person is made of a piece of bread by the papist, the third person is made of his own frenzy, malice, ignorance and folly, by the round head. To all these the spirit is intitled: One the baker makes, the other the cobbler; and betwixt those two, I think the first person is sufficiently abused.

Truth.

1. THE *Aristotelians* say, all truth is contained in *Aristotle*, in one place or another. *Galileo* makes *Simplicius* say so, but shews the absurdity of that speech, by answering, all truth is contained in a lesser compass, viz. in the alphabet. *Aristotle* is not blamed for mistaking sometimes; but *Aristotelians* for maintaining those mistakes. They should acknowledge the good they have from him, and leave him when he is in the wrong. There never breathed that person to whom mankind was more beholden.

2. The way to find out the truth is by others mistakings: For if I was to go to such a place, and one had gone before me on the right hand, and he was out; another had gone on the left hand, and he was out; this would direct me to keep the middle way, that peradventure would bring me to the place I desired to go.

3. In troubled water you can scarce see your face; or see it very little, till the water be quiet and stand still. So in troubled times you can see little truth. When times are quiet and settled, then truth appears.

Trial.

1. TRIALS are by one of these three ways; by confession, or by demurrer) that is, confessing the fact, but denying it to be that wherewith a man is charged. For example, denying it to be treason, if a man be charged with treason) or by a jury.

2. *Ordealum* was a trial, and was either by going over nine red hot plough-shares, (as in the case of queen *Emma*, accused for lying with the bishop of *Winchester*, over which she being led blindfold, and having passed all her irons, asked when she should come to her trial;) or it was by taking a red hot coulter in a man's hand, and carrying it to many steps, and then casting it from him. As soon as this was done, the

the hands or the feet were to be bound up, and certain charms to be said, and a day or two after to be opened; if the parts were whole, the party was judged to be innocent, and so on the contrary.

3. THE rack is used no where as in *England*. In other countries it is used in judicature, when there is a *semiplena probatio*, a half proof against a man; then to see if they can make it full, they rack him if he will not confess. But here in *England*, they take a man and rack him, I do not know why, nor when; not in time of judicature, but when somebody bids.

4. Some men before they come to their trial, are couzened to confess upon examination: Upon this trick, they are made to believe some body has confessed before them; and then they think it a piece of honour to be clear and ingenuous, and that destroys them.

University.

1. THE best argument why *Oxford* should have precedence of *Cambridge*, is the act of parliament, by which *Oxford* is made a body; made what it is; and *Cambridge* is made what it is; and in the act it takes place. Besides, *Oxford* has the best monuments to show.

2. It was well said of one, hearing of a *history lecture* to be founded in the university; *Would to God*, says he, *they would erect a lecture of discretion there, this would do more good there an hundred times.*

3. He that comes from the university to govern the state, before he is acquainted with the men and manners of the place, does just as if he should come into the presence-chamber all dirty, with his boots on, his riding-coat, and his head all daubed. They may serve him well enough in the way, but when he comes to court, he must conform to the place.

Vows.

SUPPOSE a man find by his own inclination he has no mind to marry, may he not then vow chastity?

Ans. If he does, what a fine thing hath he done? It is as if a man did not love cheese; and then he would vow to God almighty never to eat cheese. He that vows, can mean no more in sense, than this, to do his utmost endeavour to keep his vow.

Usury.

1. THE *Jews* were forbidden to take use one of another, but they were not forbidden to take it of other nations. That being so, I see no reason, why I may not as well take use for my money, as rent for my house. It is a vain thing to say, money begets not money; for that no doubt it does.

2. Would it not look oddly to a stranger, that should come into this land, and hear in our pulpits usury preached against; and yet the

law allow it? Many men use it, perhaps some churchmen themselves. No bishop nor ecclesiastical judge, that pretends power to punish other faults, dares punish, or at least does punish any man for doing it.

Pious uses.

THE ground of the ordinary's taking part of a man's estate, who died without a will, to pious uses, was this; to give it somebody to pray that his soul might be delivered out of purgatory. Now the pious uses come into his own pocket. 'Twas well expressed by *John & Powels* in the play, who acted the priest; one that was to be hanged, being brought to the ladder, would fain have given something to the poor; he feels for his purse, (which *John & Powels* had picked out of his pocket before) missing it, cries out, *He had lost his purse*; now he intended to have given something to the poor: *John & Powels* bid him be pacified, for *the poor had it already.*

War.

1. Do not undervalue an enemy by whom you have been worsted. When our countrymen came home from fighting with the *Saracens*, and were beaten by them, they pictured them with huge, big, terrible faces (as you still see the sign of the *Saracen's* head is) when in truth they were like other men. But this they did to save their own credits.

2. Martial law in general, means nothing but the martial law of this or that place; with us to be used in *fervere bellis*, in the face of the enemy, not in time of peace; there they can take away neither limb nor life. The commanders need not complain for want of it, because our ancestors have done gallant things without it.

3. *Question.* Whether may subjects take up arms against their prince?

Answer. Conceive it thus; Here lies a shilling betwixt you and me; ten pence of the shilling is yours, two pence is mine: By agreement, I am as much king of my two pence, as you of your ten pence: If you therefore go about to take away my two pence, I will defend it; for there you and I are equal, both princes.

4. Or thus; Two supreme powers meet; one says to the other, give me your land; if you will not, I will take it from you: The other, because he thinks himself too weak to resist him, tells him, of nine parts I will give you three, so I may quietly enjoy the rest, and I will become your tributary. Afterwards the prince comes to exact six parts, and leaves but three; the contract then is broken, and they are in parity again.

5. To know what obedience is due to the prince, you must look into the contract betwixt him and his people; as if you would know what rent is due from the tenant to the landlord, you must look into the lease. When the

the contract is broken, and there is no third person to judge, then the decision is by arms. And this is the case between the prince and the subject.

6. *Question.* What law is there to take up arms against the prince, in case he break his covenant?

Answer. Though there be no written law for it, yet there is custom; which is the best law of the kingdom; for in *England* they have always done it. There is nothing expressed between the king of *England* and the king of *France*; that if either invades the other's territory, the other shall take up arms against him, and yet they do it upon such an occasion.

7. 'Tis all one to be plundered by a troop of horse, or to have a man's goods taken from him by an order from the council-table. To him that dies, it is all one whether it be by a penny halter, or a silk garter; yet I confess the silk garter pleases more; and like trouts we love to be tickled to death.

8. The soldiers say they fight for honour; when the truth is they have their honour in their pocket. And they mean the same thing that pretend to fight for religion. Just as a parson goes to law with his parishioners; he says, for the good of his successors, that the church may not lose its right; when the meaning is to get the tithes into his own pocket.

9. We govern this war as an unskilful man does a casting-net; if he has not the right trick to cast the net off his shoulder, the leads will pull him into the river. I am afraid we shall pull our selves into destruction.

10. We look after the particulars of a battle, because we live in the very time of war. Whereas of battles past, we hear nothing but the number slain. Just as for the death of a man; when he is sick, we talk how he slept this night, and that night: what he eat, and what he drunk: But when he is dead, we only say, he died of a fever, or name his disease, and there's an end.

11. *Boccacino* has this passage of soldiers: They came to *Apollo* to have their profession made the eighth liberal science, which he granted. As soon as it was noised up and down, it came to the butchers, and they desired their profession might be made the ninth: For say they, the soldiers have this honour for the killing of men; now we kill as well as they; but we kill beasts for the preserving of men, and why should not we have honour likewise done to us? *Apollo* could not answer their reasons, so he reversed his sentence, and made the soldier's trade a mystery, as the butchers is.

Witches.

THE law against witches does not prove there be any; but it punishes the malice of those people that use such means, to take away men's lives. If one should profess that by turning his hat thrice, and crying buzz, he could take away a man's life (though in truth he could

do no such thing) yet this were a just law made by the state, that whosoever should turn his hat thrice, and cry buzz, with an intention to take away a man's life, shall be put to death.

Wife.

1. HE that hath a handsome wife, by other men is thought happy; it is a pleasure to look upon her, and be in her company; but the husband is cloyed with her. We are never content with what we have.

2. You shall see a monkey sometimes that has been playing up and down the garden, at length leap on the wall, but his clog hangs a great way below on this side: The bishop's wife is like that monkey's clog, himself is got up very high, takes place of the temporal barons, but his wife comes a great way behind.

3. 'Tis reason a man that will have a wife should be at the charge of her trinkets, and pay all the scores she sets on him. He that will keep a monkey, 'tis fit he should pay for the glasses he breaks.

Wisdom.

1. A WISE man should never resolve upon any thing, at least never let the world know his resolution, for if he cannot arrive at that, he is ashamed. How many things did the king resolve in his declaration concerning *Scotland*, never to do, and yet did them all? A man must do according to accidents and emergencies.

2. Never tell your resolution before hand; but when the cast is thrown, play it as well as you can to win the game you are at. 'Tis but folly to study how to play size-ace, when you know not whether you shall throw it or no.

3. Wise men say nothing in dangerous times. The lion you know called the sheep, to ask her if his breath smelt: She said, ay; he bit off her head for a fool. He called the wolf, and asked him: He said no; he tore him in pieces for a flatterer. At last he called the fox, and asked him: Truly he had got a cold, and could not smell. King *James* was pictured, &c.

Wit.

1. WIT and wisdom differ; Wit is upon the sudden turn, wisdom is in bringing about ends.

2. Nature must be the ground-work of wit and art; otherwise whatever is done will prove but jack-pudding's work.

3. Wit must grow like fingers; if it be taken from others, it is like plumbs stuck upon black thorns; there they are for a while, but they come to nothing.

4. He that will give himself to all manner of ways to get money may be rich; so he that lets fly all he knows or thinks, may by chance be satyrically witty. Honesty sometimes keeps a man from growing rich; and civility from being witty.

5. Women ought not to know their own wit, because they will still be shewing it, and so spoil it; like a child that will continually be shewing its fine new coat, till at length it all bedaubt it with his pah hands.

6. Fine wits destroy themselves with their own plots, in meddling with great affairs of state. They commonly do as the ape that saw the gunner put bullets in the cannon, and was pleased with it, and he would be doing so too; at last he puts himself into the piece, and so both ape and bullet were shot away together.

Women.

1. *LET the women have power on their heads, because of the angels.* The reason of the words, *because of the angels*, is this; the Greek church held an opinion that the angels fell in love with women. This fancy St. Paul discreetly catches, and uses it as an argument to persuade them to modesty.

2. The grant of a place, is not good by the canon law before a man be dead; upon this ground some mischief might be plotted against him in present possession, by poisoning, or some other way. Upon the same reason a contract made with a woman during her husband's life, was not valid.

3. Men are not troubled to hear a man dispraised, because they know, though he be naught, there is worth in others. But women are mightily troubled to hear any of them spoken against, as if the sex it self were guilty of some unworthiness.

4. Women and princes must both trust some body; and they are happy, or unhappy according to the desert of those under whose hands they fall. If a man knows how to manage the favour of a lady, her honour is safe, and so is a prince's.

5. An opinion grounded upon that, *Genes. vj. The sons of God saw the daughters of men that they were fair.*

Year.

1. It was the manner of the Jews (if the year did not fall out right, but that it was dirty for the people to come up to Jerusalem at the feast of the passover, or that their corn was not ripe for their first fruits) to intercalate a month, and so to have, as it were, two *Februaries*; thrusting up the year still higher, *March* into

April's place, *April* into *May's* place, &c. Whereupon it is impossible for us to know when our Saviour was born, or when he died.

2. The year is either the year of the moon, or the year of the sun; there is not above eleven days difference. Our movable feasts are according to the year of the moon; else they should be fixed.

3. Though they reckon ten days sooner beyond sea; yet it does not follow their spring is sooner than ours; we keep the same time in natural things, and their ten days sooner, and our ten days later in those things mean the self same time; just as twelve *sous* in *French*, are ten pence in *English*.

4. The lengthening of days is not suddenly perceived, till they are grown a pretty deal longer; because the sun, though it be in a circle, yet it seems for a while to go in a right line. For take a segment of a great circle especially, and you shall doubt whether it be straight or no. But when the sun is got past that line, then you presently perceive the days are lengthened. Thus it is in the winter and summer solstice; which is indeed the true reason of them.

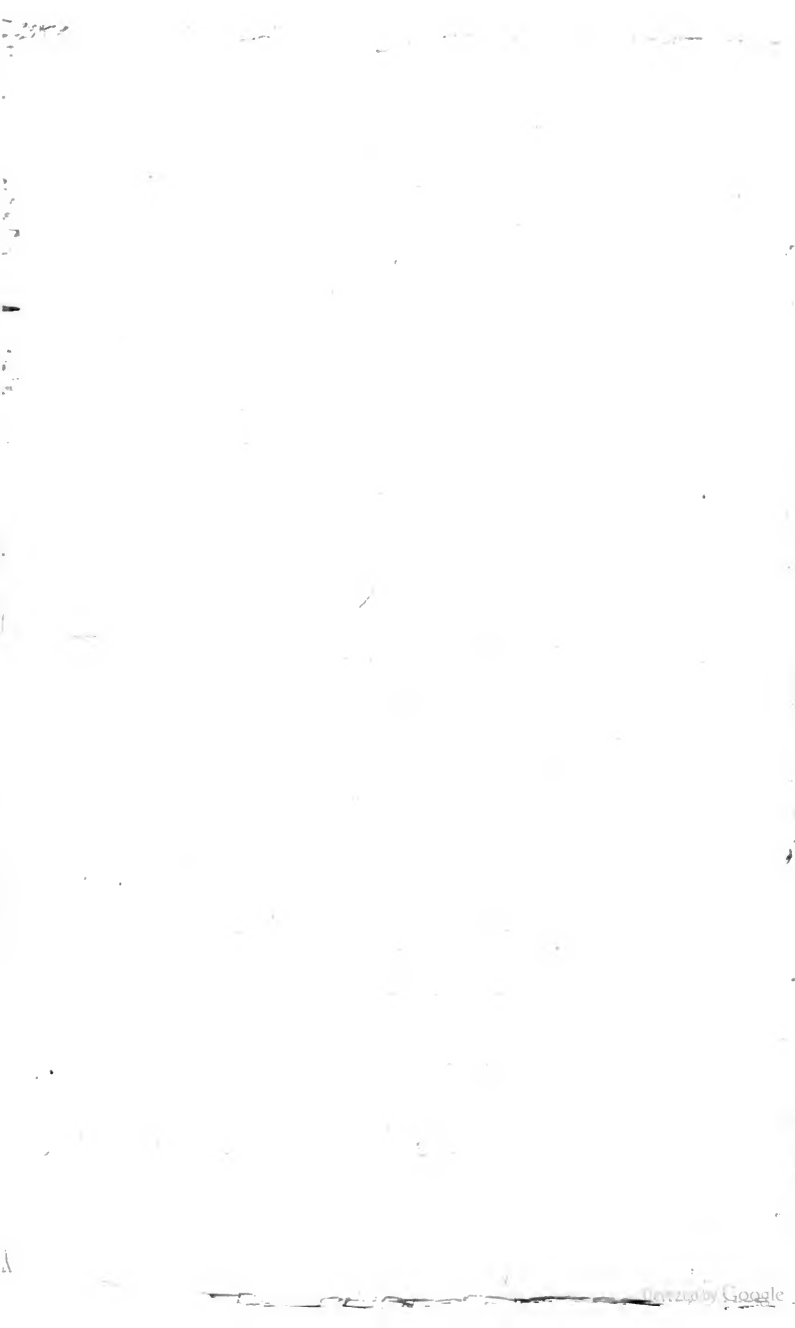
5. The eclipse of the sun is, when it is new moon; the eclipse of the moon when it is full. They say *Dionysius* was converted by the eclipse that happened at our Saviour's death, because it was neither of these, and so could not be natural.

Zealots.

ONE would wonder Christ should whip the buyers and sellers out of the temple, and no body offer to resist him, considering what opinion they had of him: But the reason was, they had a law, that whosoever did profane *santitatem Dei, aut templi*, the holiness of God, or the temple, before ten persons, it was lawful for any of them to kill him, or to do any thing this side killing him, as whipping him, or the like. And hence it was, that when one struck our Saviour before the judge, where it was not lawful to strike (as it is not with us at this day) he only replies, *If I have spoken evil, bear witness of the evil; but if well, why smitest thou me?* He says nothing against their smiting him, in case he had been guilty of speaking evil, that is blasphemy; and they could have proved it against him. They that put this law in execution were called zealots; but afterwards they committed many villainies.

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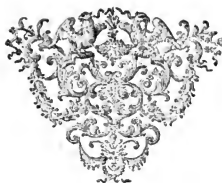
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